(16,883.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 302.

GERTRUDE J. NILES, APPELLANT,

vs.

CEDAR POINT CLUB.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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1 *Transcript of Record.*

UNITED STATES OF AMERICA,
Northern District of Ohio, Western Division, } ss:

Record of the proceedings of the circuit court of the United States within and for the western division of the northern district of Ohio in the cause and matter hereinafter stated, the same being finally disposed of at a regular term of said court begun and held at the city of Toledo, in said district, on the first Tuesday in June, being the first day of said month, in the year of our Lord one thousand eight hundred and ninety-seven, and of the Independence of the United States of America the 121st, to wit, on the 12th day of June, A. D. 1897.

Present: The Honorable John M. Harlan, circuit justice.

THE CEDAR POINT CLUB
vs.
GERTRUDE J. NILES. } Chancery. No. 1311.

Said action was commenced on the 18th day of December, A. D. 1895, and proceeded to final disposition at the term and day above written, and during the progress thereof, pleadings and papers were filed, process was issued and returned, and orders of the court were made and entered in the order, and on the dates hereinafter stated, to wit:

Bill of Complaint.

In the Circuit Court of the United States, Northern District of Ohio, Western Division.

THE CEDAR POINT CLUB, Plaintiff,
vs.
HENRY T. NILES, GERTRUDE J. NILES, FRANK NILES, Moses Burdo, and Black La Corse, Defendants. } In Equity.

To the honorable judges of the circuit court of the United States in and for the northern district of Ohio, western division:

2 The Cedar Point Club, a corporation organized under and pursuant to the laws of the State of Ohio, not incorporated for profit, and having its principal place of business in the city of Toledo, in said State, brings this, its bill of complaint, against Henry T. Niles, Gertrude J. Niles, Frank Niles, Moses Burdo and Black La Corse, all of the county of Lucas and citizens of said State.

And now comes your orator and complains and says, that it is the owner in fee-simple, in the possession of, and entitled to the exclusive possession, use and enjoyment of the following-described real estate, situate in the county of Lucas and State of Ohio, and being in town 9 south of range 9 east of the Michigan meridian, to wit:

Lots numbered one (1), two (2) and three (3); the south half (½) of the southwest quarter (¼) and the northwest quarter (¼) of the southwest quarter (¼) of section (14); also lots numbered one (1), two (2), three (3), and four (4) of section fifteen (15); also the northeast quarter (¼) of the northeast quarter (¼); the east half (½) of the southeast quarter (¼) and the south half (½) of the northeast quarter (¼); lots numbered four (4), five (5), six (6), and seven (7), of section twenty-two (22); also lot numbered one (1), the west half (½) of the northeast quarter (¼); the southeast quarter (¼) of the northeast quarter (¼); the north half of the southeast quarter (¼), the south half of the southwest (¼); the north half of the southwest quarter (¼); the south half of the northwest quarter (¼); the north half of the northwest quarter (¼), and the south half of the southeast quarter (¼) of section twenty-three (23). Also lots numbered one (1), two (2), three (3), four (4); the southwest quarter (¼) of the southeast quarter (¼); the south half (½) of the southwest quarter (¼) and the northwest quarter (¼) of the southwest quarter (¼) of section twenty-four (24). Also lots numbered five (5), six (6), and seven (7); the north half (½) of the northeast quarter (¼), the south half of the northeast quarter (¼), and the north half of the northwest quarter (¼) of section twenty-five (25). Also lots numbered four (4) and five (5) the north half of the northeast quarter (¼) of section twenty-six (26), and also lot numbered three (3) of section twenty-seven (27), all containing 2,350 & $\frac{4}{10}$ acres of land.

Also the following-described premises situate in the county of Lucas and State of Ohio and being in township nine (9) south of range ten (10) east of the Michigan meridian, to wit: Lot numbered seven (7) of section twenty-nine (29). Also lots numbered one (1), two (2), three (3), four (4), five (5), and six (6); the southwest quarter (¼) of the northwest quarter (¼), the northeast quarter (¼) of the southwest quarter (¼) and the southwest quarter (¼) of the southeast quarter (¼) of section thirty (30). Also lots numbered five, six (6), and seven (7), the northeast quarter (¼) of the northwest quarter (¼), the southeast quarter (¼) of the northeast quarter (¼) and the north half of the northeast quarter (¼) of section thirty-one (31). Also lots numbered one (1), three (3), four (4), five (5), and six (6), the northwest quarter (¼) of the southeast quarter (¼), the north half (½) of the southwest quarter (¼) and the south half of the northwest quarter (¼) of section thirty-two (32). Also lot numbered one (1) of section thirty-three (33), all containing 1,110 $\frac{3}{10}$ acres of land.

Also the following-described premises situate in the county of Lucas and State of Ohio, and being in township ten (10), south of range ten (10), east of the Michigan meridian, to wit: Lot numbered one (1) of section two (2). Also lots numbered one (1), two (2), three (3), and four (4), the west half (½) of the southwest quarter (¼), and the southeast quarter (¼) of the southwest quarter (¼) of section three (3). Also lots numbered one (1), two (2), three (3), and four (4), the southwest quarter (¼) of the northeast quarter (¼), the north half (½) of the southeast quarter (¼), the south half (½) of the southeast quarter (¼), the east half of the northwest quarter (¼) and the

east half of the southwest quarter (¼) of section four (4). Also lots numbered five (5) and six (6) of section nine (9); also lots numbered six (6), seven (7), eight (8) and nine (9) of section ten (10); also lots numbered two (2), three (3), four (4), and five (5), the north half of the southwest quarter (¼) and the south half of the northwest quarter (¼) of section eleven (11), all containing 1,301.81 acres of land.

Your orator further says that the title to the hereinbefore-described premises came to your said orator by patents issued by the United States on the 25th day of July, 1882, to one H. Melville Hanna and thereafter by the said H. Melville Hanna, by good and sufficient deed, conveyed to the said The Cedar Point Club, complainant herein.

That said plaintiff under and by virtue of said patents and deed and no other source of title, is now and has been in the open, notorious, and except as hereinafter set forth exclusive and uninterrupted use, enjoyment and possession of said premises, for upwards of thirteen years last past.

That said patents to said Hanna and said deed by said Hanna to said Cedar Point Club were entered for record and recorded
4 in the recorder's office of Lucas county, Ohio, on or about the 11th day of March, 1885, and immediately transferred and entered in the name of your orator upon the tax-rolls or duplicate of said county; since which time the said plaintiff has annually and regularly paid all taxes and assessments that have been levied and assessed annually thereon.

That said lands are of the value of upwards of ten thousand dollars. That the matter in controversy or dispute exceeds, exclusive of interest and costs, the value of two thousand dollars ($2,000).

That said complainant has expended large sums of money, to wit: more than $10,000 in the care and improvement of said property for the uses, benefits, advantages and purposes for which the same is now and has been enjoyed by your orator.

Your orator further shows that the said defendants, Henry T. Niles, Gertrude J. Niles, Frank Niles, Moses Burdo and Black La Corse, combining and confederating together have repeatedly entered upon said premises, well knowing the facts aforesaid, and have caused to be cut and removed therefrom large quantities of hay; also have caused to be placed, herded and pastured thereon a large number of horses and cattle, to wit: several hundred head, and have also plowed and planted thereon, without the consent of your orator, but against the objection and complaint of the said complainant herein.

That said defendants confederating and combining together, threaten to continue to so enter upon said premises, cut hay therefrom, pasture and herd their cattle thereon and plow and plant upon the same, and thereby and therein have often and repeatedly committed acts of trespass thereon, and give out in their talk and speech and threaten to continue to commit such depredations and acts of trespass thereon.

Your orator avers that the said defendants, jointly and severally, claim to justify said several alleged acts of trespass and threatened

acts of trespass, upon the ground that under the Constitution and laws of the United States the said patents are invalid, and that by reason of such invalidity thereof, the said patents failed to confer upon or vest in the said grantor of your orator any title whatever in or to the said premises and consequently the title to said described premises thereunder, is not now and never was in said complainant.

And your orator further avers and shows that the said defendants also make and assert some claim upon title, interest or estate
5 in and to the whole or some part of said premises aforesaid adverse to the estate and interest of said plaintiff and under and by virtue of some patents or grants from the United States made prior in date to the said patents to said H. Melville Hanna.

Your orator further shows that the matters and questions or either thereof thus in dispute or controversy between said plaintiff and said defendants arise under the Constitution and laws of the United States and not otherwise.

That the injury resulting from each act of trespass would be trifling in amount as compared with the expense of prosecuting actions at law to recover damages therefor. All of which acts of trespass have been against the will of your orator and in violation of your orator's rights and against its protest. All of which acts and doings are contrary to equity and good conscience and to the manifest injury of your orator in the premises.

Forasmuch as your orator can have no adequate relief, except in this court, and to the end therefore, that the defendants may, if they can show why your orator should not have the relief hereby prayed and may make a full disclosure and discovery of all the matters aforesaid and according to the best and utmost of their knowledge, remembrance, information and belief, full, true, direct and perfect answer make to the matters hereinbefore stated and charged, but not under oath, an answer under oath being hereby expressly waived.

That defendants jointly and severally may be restrained from any further violation of said rights, your orator prays that your honors may grant a writ of injunction issuing out of and under the seal of this honorable court, perpetually enjoining and restraining the said defendants, their agents, servants, workmen and employés and defendants' lessees and licensees from further entering upon said premises or cutting hay therefrom or plowing the same, or herding or pasturing cattle thereon, in violation of your orator's rights as aforesaid.

And your orator further prays that a provisional or preliminary injunction be issued restraining said defendants, each and all of them, their agents, servants and employés, lessees and licensees from any further acts of trespass upon said described premises.

And your orator further prays that the said defendants severally be compelled to answer herein and show their said title, and that the same may be determined to be null and void as against the said title of your said orator, and that complainant's title in and to said premises as against the claim of said defendants may be for-
6 ever quieted in it, its grantors, successors and assigns, and for

such other and further relief as the equity of the case may require and to your honors may seem mete.

May it please your honors to grant unto your orator not only a writ of injunction conformable to the prayer of this bill, but also a writ of subpœna of the United States of America, directed to the said Henry T. Niles, Gertrude J. Niles, Frank Niles, Moses Burdo and Black La Corse, commanding them on a day certain to appear and answer unto this bill of complaint and to abide and perform such order and decree in the premises as to the court shall seem proper and required by the principles of equity and good conscience.

POTTER & EMERY,
Solicitors for Complainant and of Counsel.
CEDAR POINT CLUB,
By JOHN CUMMINGS, *Vice-Pres't.*

UNITED STATES OF AMERICA,
Northern District of Ohio, Western Division.

On this 18th day of December, A. D. 1895, before me personally appeared John Cummings, the vice-president of The Cedar Point Club, the complainant above named, who being by me duly affirmed, deposes and says that he is the vice-president of the Cedar Point Club, familiar with its business and that he has read the foregoing bill of complaint and knows the contents thereof. That the same is true of his own knowledge, except as to the matters therein stated on information and belief and as to these matters he believes it to be true.

JOHN CUMMINGS.

Subscribed and sworn to before me this 18th day of December, A. D. 1895.

J. W. LYONS,
[SEAL.] *Notary Public, Lucas County, Ohio.*

Endorsement on bill of complaint: 1311. U. S. circuit court, northern dist. of Ohio, western div. The Cedar Point Club *vs.* Henry T. Niles *et al.* In equity. Bill. Filed Dec. 18, 1895. Irvin Belford, clerk. Potter & Emery, solicitors for complainant.

Order for Preliminary Injunction.

December Term, A. D. 1895, to wit, December 18th, 1895.

7 Present: The Honorable Augustus J. Ricks, United States district judge.

THE CEDAR POINT CLUB
vs.
HENRY T. NILES, GERTRUDE J. NILES, Frank Niles, Moses Burdo, and Black La Corse. } No. 1311. Chancery.

This day came the plaintiff in said above cause, The Cedar Point Club, by Potter & Emery, its solicitors and counsel, and thereupon

this cause came on for hearing and was heard upon the application of said plaintiff for a provisional injunction, as prayed for in its said bill of complaint, pending the final hearing and determination of said cause.

On consideration whereof, the court being now advised in the premises, it is ordered that a provisional injunction be and is hereby granted herein as prayed for in said bill restraining said defendants, Henry T. Niles, Gertrude J. Niles, Frank Niles, Moses Burdo and Black La Corse, each and all of them, their agents, servants and employés, lessees and licensees from so trespassing or entering upon all or any of the premises described in said bill of complaint, or cutting or removing hay therefrom, or plowing the same or herding or pasturing horses or cattle thereon, or causing the same to be so done thereon; this order to remain in force until the further order of the court herein and conditioned upon the said plaintiff giving bond in the sum of five hundred dollars, to the acceptance of the clerk of said court, and conditioned according to law and the rules of this court.

It is further ordered that a copy of the foregoing provisional order be served upon each of said defendants, together with the writ of subpœna issued in said cause.

Subpœna in Chancery.

THE UNITED STATES OF AMERICA,
Northern District of Ohio, Western Division, } ss:

The President of the United States of America to the marshal of the northern district of Ohio, Greeting:

You are hereby commanded, to summon Henry T. Niles, Gertrude J. Niles, Frank Niles, Moses Burdo, Black La Corse, if they be found in your district, to be and appear in the circuit court of the United States, within and for the district aforesaid, at Toledo,
8 Ohio, on the first Monday in March next, to answer a certain bill in chancery, filed and exhibited in the said court against them by the Cedar Point Club.

Hereof they are not to fail under the penalty of the law, thence ensuing, and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 18th day of December, A. D. 1895, and in the 120th year of the Independence of the United States of America.

[SEAL.] IRVIN BELFORD, *Clerk.*

Memorandum.

The said defendants are required to enter their appearance in this suit, in the clerk's office of said court, on or before the first Monday of February, 1895, otherwise the said bill may be taken *pro confesso.*

IRVIN BELFORD, *Clerk.*

Endorsements on subpœna when issued: No. 1311. United States circuit court, northern district of Ohio, western division. In chancery. The Cedar Point Club *vs.* Henry T. Niles *et al.* Subpœna. Returnable February 3, 1896. Rule day for appearance, February 3, 1896; rule day for answer, March 2, 1896. Potter & Emery, complainant's solicitors.

Endorsements on subpœna when returned:

Marshal's Return.

NORTHERN DISTRICT OF OHIO, *ss:*

On the 5th day of January, 1896, near Cedar Point, Ohio, I made due service of this writ upon the within-named Gertrude J. Niles, Frank Niles, Moses Burdo, and Black La Corse, and on the 6th day of January, 1896, at Toledo, on Henry T. Niles, by delivering to each a true and duly certified copy thereof with all endorsements thereon, and at the same time I delivered to each of the above-named persons a certified copy of order of injunction in this case.

W. C. HASKELL,
U. S. Marshal,
By D. HARMON, *Deputy.*

Service	$20 00
Copy	2 50
Exps. in lieu of travel	3 25
Return	10
	$25 85

9 Returned and filed Jan. 22, 1896.

IRVIN BELFORD, *Clerk.*

Undertaking for Costs.

In the Circuit Court of the United States for the Northern District of Ohio, Western Division.

THE CEDAR POINT CLUB
vs.
HENRY T. NILES ET AL. } No. 1311.

Stipulation for costs.

We hereby acknowledge ourselves security for all costs for which the complainant may be liable in the above-entitled suit.

JOHN CUMMINGS.
ARTHUR J. SECOR.

Endorsement on undertaking: No. 1311. The Cedar Point Club *vs.* Henry T. Niles *et al.* Stipulation for costs on part of complainant. Taken and filed Dec. 18, 1895. Irvin Belford, clerk.

Injunction Bond.

Know all men by these presents, that we, John Cummings and Arthur J. Secor, of Toledo, Ohio, are held and firmly bound unto Henry T. Niles, Gertrude J. Niles, Frank Niles, Moses Burdo and Black La Corse, in the sum of five hundred ($500) dollars to the payment whereof we bind ourselves, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals, and dated this 18th day of December, A. D. 1895.

The condition of the above obligation is such that, whereas the Cedar Point Club, a corporation organized under and pursuant to and resident of the State of Ohio has filed in the circuit court of the United States for the northern district of Ohio, a bill in chancery against the said Henry T. Niles *et al.*, and has obtained an allowance of an injunction, as prayed for in said bill, from the — :

Now, if the said Cedar Point Club shall abide the decision of said court in said cause, and pay all moneys and costs, which shall be adjudged against it in case the said injunction shall be dissolved, then these presents shall be void; otherwise to remain in full force.

JOHN CUMMINGS. [SEAL.]
ARTHUR J. SECOR. [SEAL.]

Endorsement on injunction bond: U. S. circuit court, northern district of Ohio. No. 1311. Cedar Point Club *vs.* Henry T. Niles *et al.* Injunction bond. Approved and filed Dec. 18, 1895. Irvin Belford, clerk.

Appearance of Defendants.

Order Book, vol. 3, page 159—December Term, 1895.

THURSDAY, *January 30th*, 1896.

THE CEDAR POINT CLUB
vs.
HENRY T. NILES ET AL. } 1311.

I hereby enter the appearance of Henry T. Niles, Gertrude J Niles, Frank Niles, Moses Burdo and Black La Corse.

F. C. DAUGHERTY &
HENRY T. NILES,
Solicitors for Def'ts.

Answer and Cross-bill of Gertrude J. Niles.

In the Circuit Court of the United States in and for the Northern District of Ohio, Western Division.

THE CEDAR POINT CLUB, Plaintiff, *vs.* HENRY T. NILES, GERTRUDE J. NILES, Frank Niles, Moses Burdo, and Black La Corse, Defendants.	In Equity.	No. 1311.

Answer and cross-bill of Gertrude J. Niles.

The said defendant, Gertrude J. Niles, for her answer and cross-bill herein, avers:

That she denies that the said plaintiff is the owner in fee-
11 simple or otherwise of the land in the said complaint described or any part or portion thereof and denies that said plaintiff is in possession thereof and denies that it is entitled to the possession thereof.

That said defendant, however, admits that patents were issued by the United States for the date in the said complaint alleged and set forth to one, H. Melville Hanna and that said Hanna did thereafter execute and deliver a deed therefor to the said plaintiff, but the defendant denies that the plaintiff is now or ever has been in the open, notorious and exclusive use, enjoyment and possession of the said premises or any part thereof.

The said defendant says, however, that she makes no claim to certain islands known and designated as "Cedar Point," "Sandy," and "Crane," and that should they or any of them as patented and sold by the United States be included in the description of the real estate in said bill set forth, that as to them or either of them her said denial has no application.

That defendant denies that said plaintiff has expended any moneys in the care and the improvement of said real estate.

That defendant avers that the survey and patents under which the said plaintiff claims title and possession were made without authority of law and in contravention thereof and that they are void and in good conscience ought by this court to be so declared;

For the said defendant avers that she is the owner in fee-simple and in possession of the following-described real estate, to wit:

Fractional sections twenty-two (22), twenty-seven (27), twenty-six (26), and twenty-five (25), in township nine (9) south of range nine (9) east, also fractional sections thirty (30), thirty-one (31), and thirty-two (32), in township nine (9) south of range ten (10) east, also fractional sections four (4), nine (9), ten (10), and eleven (11), of township ten (10) south of range ten (10) east.

That the title to said last-described fractional section was derived by patent issued to one Margaret Bailey on the 10th of July, 1844, of which the following is a true and exact copy:

"Number 17698.

The United States of America to all to whom these presents shall come, Greeting:

Whereas, Margaret Bailey, of Champaigne county, Ohio, has deposited in the General Land Office of the United States a certificate of the register of the land office at Bucyrus, whereby it appears that full payment has been made by the said Margaret Bailey according to the provisions of the act of Congress of the 24th of April,
12 1820, entitled 'An act making further provision for the sale of public land' for fractional section eleven (11), in township ten (10), south of the Michigan base line of range ten (10), in the district of land subject to sale at Bucyrus, Ohio, containing twenty (20) acres and forty-five-hundredths of an acre, according to the official plat of the survey of said lands returned to the General Land Office by the surveyor general, which said tract has been purchased by the said Margaret Bailey:

Now know ye that the United States of America, in consideration of the premises and in conformity with the several acts of Congress, in such case made and provided, have given and granted, and by these presents do give and grant unto the said Margaret Bailey, and to her heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities and appurtenances, of whatsoever nature thereunto belonging, unto the said Margaret Bailey, and to her heirs and assigns forever.

In witness whereof, I, John Tyler, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington on the tenth day of July, in the year of our Lord one thousand eight hundred and forty-four, and of the Independence of the United States the sixty-ninth.

By the President:

[SEAL.] JOHN TYLER,
By WILLIAM TYLER.

N. M. WHITNEY,
Recorder of the General Land Office."

That patents were issued by the United States to the said Margaret Bailey for the other said fractional sections hereinbefore described and they are similar and identical with the one herein set forth in full except as to the descriptions of the lands conveyed.

The said defendant avers that she holds title to said real estate hereinbefore described by an unbroken chain of title running back to and derived from, the said patents from the United States to the said Margaret Bailey hereinbefore described and that she and her grantors have had and held open, notorious, exclusive and adverse possession of the same from the date of the issue of said patents to the said Margaret Bailey.

The said defendant avers that said fractional sections so patented

and conveyed to the said Margaret Bailey and now owned
13 and possessed by the said defendant are a part of the land known and designated as the Congress lands of the United States, surveyed under the act of Congress of the date of May the 18th, 1796.

That at the time of the said survey and the patents made from the United States to the said Margaret Bailey and for many years thereafter the north line of the said fractional sections were at the water's edge and were the south shore of Lake Erie and the said sections were by the survey made under said act, so made fractional because they were, on the north side, bounded by Lake Erie.

The said defendant avers that the land- in the said complaint described adjoin and abut upon said fractional sections of said defendant's land throughout their entire length upon the north or lake side, so that the said north line of said defendant's land has meandered along the lake shore by the United States surveyor and the south line of the lands claimed by the plaintiff and described in the complaint are substantially the same and identical.

The said defendant avers that since the survey and patents made thereunder to the said Margaret Bailey the waters of Lake Erie have gradually receded from the shore as it existed at the time of the said survey and patents so that the land- described in the complaint, by reason of the waters of said lake having so gradually receded, *and* have become dry and solid land, located and situated between the premises of this defendant as hereinbefore described and the waters of Lake Erie, thus completely cutting off therefrom all access to said lake from said defendant's lands.

The said defendant says that the complainant's grantor procured the said land which had so become dry as aforesaid to be surveyed and patented at a time when the United States had no title to or right of any kind to the same and no power or authority to convey the same by patent or otherwise, and when by reason of the recession of the waters of said lake the said lands in the complaint described had become the property of the defendant, as a riparian owner, as reliction.

The said defendant therefore denies that she has ever trespassed upon the property of the said complainant and says that whatever occupancy and possession she has ever had or exercised has been under her claim to the ownership thereof as hereinbefore set forth.

Wherefore the said defendant prays this honorable court to dismiss the bill of said complainant, to set aside the patents issued to the said H. Melville Hanna and the deeds made by him to the said complainant and further prays that the title of said defendant
14 to said land may be forever quieted and for such other and further relief to which this defendant may in equity and conscience be entitled.

FRANK C. DAUGHERTY,
HENRY T. NILES,
Solicitors for Gertrude J. Niles.

Endorsement on answer and cross-bill of Gertrude J. Niles: No.

1311. The circuit court of the United States. The Cedar Point Club, plaintiff, *vs.* Henry T. Niles *et al.* Answer and cross-bill of Gertrude J. Niles. Filed Feb. 6, 1896. Irvin Belford, clerk. Frank C. Daugherty, solicitor for Gertrude J. Niles.

Replication.

In the United States Circuit Court, Northern District of Ohio, Western Division.

CEDAR POINT CLUB, Complainant,
vs.
HENRY T. NILES ET AL., Defendants. } No. 1311.

Replication of The Cedar Point Club, complainant, to the answer and cross-bill of Gertrude J. Niles.

The complainant saving and reserving unto itself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say, that *they* will aver, maintain and prove *their* said bill of complaint to be true, certain and sufficient in law to be answered unto, and that the said answer of the said defendant Gertrude J. Niles is uncertain, untrue and insufficient to be replied unto by this repliant. Without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true.

All which matters and things this repliant is and will be ready to aver, maintain and prove as this honorable court shall direct and humbly pray- as in and by *their* said bill *they* have already prayed.

POTTER & EMERY,
Solicitors for Complainant.

April 17, 1896.

15 Endorsement on replication: U. S. circuit court, northern dist. of Ohio, western div. No. 1311. Cedar Point Club *vs.* Henry T. Niles *et al.* Replication. Filed April 17, 1896. Irvin Belford, clerk. Potter & Emery, solicitors for complainant.

Continuance.

December Term, A. D. 1895, to wit, May 16th, 1896.

Present: Honorable Henry F. Severens, U. S. district judge.
Honorable Augustus J. Ricks, U. S. district judge.

THE CEDAR POINT CLUB
vs.
HENRY T. NILES ET AL. } No. 1311. Chancery.

This cause is continued until the next term of this court.

Agreed Statement of Facts.

In the Circuit Court of the United States for the Northern District of Ohio, Western Division.

THE CEDAR POINT CLUB, Complainant,
vs.
HENRY T. NILES, GERTRUDE J. NILES, FRANK Niles, Moses Burdo, and Black La Corse, Defendants.
} Agreed Statement of Facts.

The following facts are admitted and agreed upon for the purposes of the hearing, submission and determination of this cause:

1. The complainant hath been and is a body corporate as in and by its bill set forth and as such duly authorized to take and hold title to real estate situate as in and by its said bill mentioned and described.

2. During the years 1834 and 1835, Ambrose Rice, a deputy surveyor pursuant to a contract dated August 31, 1833, with the then surveyor general of the United States for Ohio, Indiana and the Territory of Michigan, surveyed and subdivided into sections, fractional townships 9 south in range 9 east, and 9 and 10 south
16 in range 10 east, from the Michigan meridian, and duly certified his field-notes of such survey and subdivision to the then surveyor general, Robert T. Lytle. The said field-notes of said Rice survey showing the township and section lines to post at boundary line of survey, so far as pertinent to the present issue, are in words and figures following:

In town 9 south, range 9 east.

North, between secs. 21 and 2, T. 9 S., R. 9 E., of the Mich. mer.

12.00 Enter a point of woods from west.
16.00 Leave woods and enter marsh.
26.25 To an Indian trail leading S. E.
40.00 Set a post in mound for the cor. of qur. secs.
55.40 To the S. margin of Maumee bay and set a post in mound of earth. Coal and turf.

East, between secs. 22 and 27, T. 9 S., R. 9 E., of the Mich. mer.

40.00 Set a post for the cor. of qur. sec. in prairie and raised a mound of coal, earth and turf.
52.05 Set a post from which a pin oak 10 in. diam. bears N. 34¾ W. 375 lks. dist.

North, between secs. 26 and 27, T. 9 S., R. 9 E., of Mich. mer.

18.32 To a W. oak 30 in. diam. in the line.
20.13 To a bur oak 24 in. diam. in the line.
24.03 To a bur oak 36 in. diam. in the line.
35.00 To a bayou course W. to E., 3 feet water.

40.00 Set a post for the cor. of qur. sec. from which a hickory 9 in. diam. bears N. 40 W. 11 lks. dist., and a R. elm 9 in. diam. bears N. 56 E. 12 lks. dist.
48.00 Enter great marsh.
67.00 Set a post. Land level, wet, 3d rate.

North, between sec. 25 and 26, T. 9 S., R. 9 E., of the Mich. mer.

20.33 To a W. elm 30 in. diam. on the line.
28.00 To a belt of marsh from N. W. to E.
40.09 Set a post for the corner of qur. sec. from which a W. elm 20 in. diam. bears S. 75 W. 8 lks. dist., and a locust 24 in. diam. bears N. 40 E. 28 lks. dist.
45.00 Set a post in edge of drowned marsh from which a W. elm 9 in. diam. bears S. 27 E. 189 lks. dist. and a hickory 9 in. diam. bears S. 14 W. 175 lks. dist.

17 North, on the E. bound. of sec. 25, T. 9 S., R. 9 E., of the Mich mer.

9.00 Enter a point of woods from west.
16.00 Leave the woods and enter a marsh.
24.00 Set a post from which a W. elm 36 in. diam. bears S. 31 W. 4.18 lks. dist., and a W. elm 24 in. diam. bears S. 36¾ E. 376 lks. dist.

In town 9 south, range 10 east.

North on the W. bound. of sec. 30, T. 9 S. R. of the mer.

9.00 Enter a point of woods from the west.
16.00 Leave the woods and enter a marsh.
24.00 Set a post for the cor. of qur. sec. from which a W. elm 36 in. diam. bears S. 31 W. 4.18 chs. dist., etc.; a W. elm 24 in. diam. bears S. 36¾ E. 3.76 chs. dist., etc.

East, between secs. 30 and 31, T. 9 S., R. 10 E., var. 3 degrees 05 minutes E.

10.00 To a flag marsh and set post in marsh from which a W. elm 24 in. diam. bears S. 37 W. 3.54 chs. dist., and a W. elm 24 in. diam. bears S. 1½ W. 2.91 chs. dist.

In town 10 south, range 10 east.

East, between secs. 4 and 9.

10.00 Set a cedar post in marsh.

North, between secs. 9 and 10.

19.11 To a R. oak 36 in. diam. in line.
40.00 To a post for the cor. of qur. secs. from which a W. elm 16 in. diam. bears N. 82, W. 24 chs. distant, and a bur oak 20 in. diam. bears N. 53, E. 11 chs. distant.
59.45 To a maple 18 in. diam. bears in the line.

71.00 Set a post in S. margin of marsh for the cor. of secs. 9 and 10, fracl., a B. ash 9 in. diam. bears S. 6, E. 1.38 chs. distant, etc., a B. ash 9 in. diam. bears S. 78 W. 2.77 chs. distant.

North, between secs. 10 and 11.

2.00 Set a post in the S. margin of flag marsh, from which a W. elm 30 in. diam. bears S. 59, E. 3.22 chs. distant.

East, between secs. 11 and 14.

36.00 To Crane creek 1.00 chs. wide, runs N. stagnant.
18 40.00 Set a post for the cor. of qur. secs. in inundated marsh.

75.00 Set a post in S. W. margin of inundated marsh of Lake Erie; a locust 18 in. diam. bears N. 89, W. 5.25 chs. distant. No bearing trees near. Land, wet prairie and marsh.

The said field-notes of said Rice's survey of the said line at the margin of the marsh, and being the line between the land surveyed by Rice and that surveyed by Marston, for and by way of subdivision into sections, are in the words and figures following:

Township 9 south, range 9 east, of the Mich. mer. (Ohio).

In section 22.

East, 2.00 to a flag marsh.
S. 12 E. 25.00 along margin of flag marsh.
S. 69 E. 29.00 N. 62 E. 13.50; east 3.00; S. 3 E. 23.00.
S. 23 E. 4.25 to post on the line between secs. 22 and 27.

In section 27.

S. 23 E. 22.25 S. 70 E. 15.00.
N. 23¼ E. 13.44 to the post on the line between secs. 26 and 27.

In section 26.

S. 60 E. 21.00
N. 42 E. 7.50
S. 56 E. 17.00
East 21.00
} Don't close by 20 chains.

S. 60 E. 5.39 to the post on the line between secs. 25 and 26.

In section 25.

N. 87 E. 21.50; S. 69 E. 14.00; S. 73 W. 19.50; S. 30 E. 9.00; S. 60 E. 9.50.
East 50.89 to the post on line between ranges 9 and 10 E.

Township 9 south, range 10 east, of the Mich. mer.

From post on the west line of sec. 30, thence in sec. 30.
S. 82 E. 12.00; S. 64 E. 19.00; south 2.00; S. 87 W. 22.00.
19 S. 16½ E. 10.69 to post on the line between secs. 30 and 31.
S. 35 E. 6.50 in section 31.

West 9.50 to mouth of bayou from W. 3.00 chs. wide.
South 12.50.
S. 43 E. 20.00 over bayou from south.
S. 86 E. 20.00; S. 65 E. 11.50; S. 48 E. 25.00; S. 46 W. 4.50.
S. 37 E. 27.03 to post cor. of secs. 5, 6, 31, and 32, in section 32.
N. 68 E. 23.00; S. 84 E. 45.00.
S. 76¼ E. 14.45 to post cor. of secs. 4, 5 and 32.

Township 10 S. of R. 10 E. of Mich. mer.

From the post cor. of secs. 4, 5, 32 and 33, thence:
S. 19 E. 20.00 in sec. 4.
S. 3¼ E. 61.20 to the post in line between secs. 4 and 9.
S. 50 E. 9.00 over a bayou in sec. 9.
S. 85 E. 50.00 over a bayou.
N. 84 E. 13.53 to the post on line between secs. 9 and 10.
N. 84 E. 30.00 in sec. 10.
S. 72 E. 10.00; N. 86½ E. 26.00.
East 15.00 to Fawn point.
South 2.00 S. 73 W. 30.00; south 15.00.
S. 83 E. 19.00 Little grove.
S. 43 E. 15.00. A point of woods from the west.
S. 29 W. 30.00.
S. 69 E. 14.16 to the post on line between secs. 10 and 11.
East 35.00 in sec. 11.
N. 85 E. 32.00.
S. 60 E. 9.40 to the post on line between secs. 11 and 14. In sec. 14.
S. 2.20 to the State line.

3. Said Lytle as such surveyor general from and in accordance with the said field-notes caused to be made descriptions of the said surveyed lands and a fair plat of said respective townships showing and describing the subdivisions thereof and marking all and singular the actually surveyed lines and the respective corners designated in and by the said survey and noted in the said certified field-notes thereof, and in each instance showing the length and course of the respective line, whether straight or meander, between the said marked corners constituting its termini, all in conformity to the said survey and the certified field-notes thereof, and made return thereof to the General Land Office.

20 4. Said plat showed the northerly line of the mainland portion of said survey, a line with its intersection of each township and section line, evidenced by a post placed at such intersection, as the said line was actually surveyed and marked as shown by said certified field-notes, beginning on the west line of section 19, in town 9 south range 9 east, and thence running in a general easterly and southerly, but meandering and tortuous course to and across the south line of section 11, in town 10 south, range 10 east.

5. The said plat showed the said line of said survey from the west line of said township to a point 2 chains easterly from its intersection of the line between sections 21 and 22 in town 9 range 9, to

be the shore of Maumee bay; and from that point southerly and easterly the plat shows this line on the northerly and easterly sides of fractional sections 22, 27, 26 and 25, in town 9, range 9, sections 30, 31 and 32 in town 9, range 10, and sections 4, 9, 10 and 11 in town 10, range 10, to be the boundary of what is called the "flag marsh" and "impassable water and marsh."

6. As shown in and upon said original plat, somewhat east of north from the point where this line of the survey crosses the north and south quarter line through section twenty-two, town 9, range 9, and about a mile and a half from it, began an island called Cedar island. This extended northerly for more than half a mile, and then southeasterly to a point opposite the said line along the northerly side of section 25 in said township. A short distance southeast of this another island began and extended southeasterly beyond the north line of section 5, in town 10, range 10, projected easterly. Then there was a narrow inlet. A third island began on the easterly side of this inlet, and extended southeasterly almost to what would be the east line of section 11, town 10, range 10. Between these islands and the tortuous line above described, was the space designated "flag marsh" and "impassable marsh and water." No surveyed lines other than the township lines crossed either the intervening marsh or the islands. The northwestern island was named "Cedar" and was the largest. The plat showed it as containing 53.83 acres, all in town 9, range 9. The one next east of it was marked as "Sandy island." The plat showed that 7.52 acres of it were in town 9, range 9; 28.49 acres in town 9, range 10 and 1.18 acres in town 10, range 10. The southeastern island was marked as "Crane island," containing 18.38 acres all in town 10, range 10. From the northwest end of Cedar island to the south-
21 east end of Crane island was about nine and one-half miles. Norman strait separated Cedar and Sandy islands. Lily strait lay between Sandy and Crane, and Crane creek entered the lake at the east end of Crane island.

The field-notes on the plat showed that the circumference of each island was surveyed or meandered. The plat and marginal field-notes also show that the southerly edge of the "flag marsh," "impassable marsh and water" was surveyed and that the lines of the fractional sections southerly of the said marsh and water, were identical with the southerly edge of the marsh. The computed areas of the fractional sections and of their respective subdivisions, as shown upon the said plat conformed to the area included within the said surveyed lines and did not nor any thereof include any part of either marsh, water or islands.

7. On July 10, 1844, eleven patents issued to Margaret Bailey, one whereof is fully and accurately set out in the answer of defendant, Gertrude J. Niles. The other ten of said patents are of same date and identical in form with this one, except as to description. The descriptions contained therein are respectively as follows:

"Fractional section twenty-two, in township nine south of the Michigan base line, of range nine, in the district of lands subject to

sale at Bucyrus, Ohio, containing one hundred and forty-two acres and fifteen-hundredths of an acre."

"Fractional section twenty-seven, in township nine south of the Michigan base line of range nine, in the district of land subject to sale at Bucyrus, Ohio, containing five hundred and eighty-eight acres and fifty-eight-hundredths of an acre."

"Fractional section twenty-six, in township nine, south of the Michigan base line of range nine, in the district of land subject to sale at Bucyrus, Ohio, containing four hundred and forty-three acres and ninety-four-hundredths of an acre."

"Fractional section twenty-five, in township nine, south of the Michigan base line of range nine, in the district of lands subject to sale at Bucyrus, Ohio, containing two hundred and forty-five acres and fifty-three-hundredths of an acre."

"Fractional section thirty in township nine, south of the Michigan base line of range ten, in the district of lands subject to sale at Bucyrus, Ohio, containing thirty-four acres and eighty-six-hundredths of an acre."

"Fractional section thirty-one in township nine, south of
22 the Michigan base line of range ten, in the district of lands subject to sale at Bucyrus, Ohio, containing three hundred and twenty acres and seventy-two-hundredths of an acre."

"Fractional section thirty-two in township nine, south of the Michigan base line of range ten, in the district of land subject to sale at Bucyrus, Ohio, containing thirty-three acres and seventy-two-hundredths of an acre."

"Fractional section four in township ten, south of the Michigan base line of range ten, in the district of land subject to sale at Bucyrus, Ohio, containing fifty-six acres and thirty-hundredths of an acre."

"Fractional section nine in township ten, south of the Michigan base line of range ten, in the district of land subject to sale at Bucyrus, Ohio, containing five hundred and eighty-five acres and nine-hundredths of an acre."

"Fractional section ten in township ten, south of the Michigan base line of range ten, in the district of land subject to sale at Bucyrus, Ohio, containing four hundred and ninety-four acres and twenty-hundredths of an acre."

8. That all right and title conveyed by the United States to Margaret Bailey in and by the said several patents passed by mesne conveyances to, and, was at the commencement of this suit vested in the defendant Gertrude J. Niles, but said Margaret Bailey did not acquire nor hath defendant Gertrude J. Niles by title derived under the said patents or otherwise ever acquired title to the said islands or any part of either thereof.

9. On September 16, 1861, patent issued to Chester W. Norton, in the words and figures following:

Number 15976.

The United States of America to all to whom these presents shall come, Greeting:

Whereas, Chester Willis Norton, of Wood county, Ohio, has deposited in the General Land Office of the United States a certificate of the register of the land office at Defiance, whereby it appears that full payment has been made by the said Chester W. Norton according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provisions for the sale of the public lands" for the lot known as Cedar point, east of Maumee bay, in township nine, south of range nine, east of the Michigan meridian in the district of lands formerly subject to sale at Defiance now Chillicothe, Ohio, containing thirty-four acres and eighty-nine-hundredths of an acre, according to the official plat of the survey of the said lands returned to the General Land
23 Office by the surveyor general, which said tract has been purchased by the said Chester Willis Norton.

Now, know ye that the United States of America, in consideration of the premises and in conformity with the several acts of Congress, in such case made and provided, have given and granted, and by these presents do give and grant unto the said Chester Willis *Morton* and to his heirs, the said tract above described. To have and to hold the same, together with all the rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging, unto the said Chester Willis Norton, and to his heirs and assigns forever. Subject to a reservation in favor of the United States for such quantity of land as would be requisite for the purposes should the Government hereafter desire to erect a light-house upon any part of the tract.

In witness whereof I, Abraham Lincoln, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington the sixteenth day of September, in the year of our Lord one thousand eight hundred and sixty-one, and of the Independence of the United States the eighty-sixth.

By the President:

ABRAHAM LINCOLN,
By W. O. STODDARD, *Sec'y.*

[SEAL.]
J. N. GRANGER,
Recorder of the General Land Office.

10. On October 10, 1876, a patent issued to Arthur Dudley Howell, reading thus:

"*Certificate No.* 20126.

The United States of America to all to whom these presents shall come, Greeting:

Whereas, Arthur Dudley Howell, of Lucas county, Ohio, has deposited in the General Land Office of the United States a certificate

of the register of the land office at Chillicothe, Ohio, whereby it appears that full payment has been made by said Arthur Dudley Howell, according to the act of Congress of the 24th of April, 1820, entitled 'An act making further provisions for the sale of the public lands,' for Sandy island and Crane island, on the shore of Lake Erie, in section 24, in township 9, of range 9 east, and in sections 19, 29, 30, 32 and 33 in township 9 south of range 10 east, and in sections 2, 3, 4 and 11, in township 10, south of range 10,
24 East Michigan meridian, in the district of lands subject to sale at Chillicothe, Ohio, containing fifty-five and fifty-seven-hundredths of an acre, according to the official plat of the surveyor of the said lands, returned to the surveyor general, which said tracts have been purchased by the said Arthur Dudley Howell. Now, know ye that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such cases made and provided have given and granted, and by these presents do grant unto the said Arthur Dudley Howell, and to his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities and appurtenances of whatever nature thereto belonging unto the said Arthur Dudley Howell, his heirs and assigns forever.

In testimony of which I, Ulysses S. Grant, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereto affixed.

Given under my hand, at the city of Washington, the tenth day of October, in the year one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundred and first.

By the President:

U. S. GRANT,
By D. D. CONE, *Sec'y.*

[SEAL.]
W. S. CLARK,
Recorder of Gen. Land Office."

11. In April and May, 1881, John B. Marston, a civil engineer residing in Lucas county, under the instructions from the Commissioner of the General Land Office of date April 2, 1881, surveyed and subdivided into sections the area which was as aforesaid in and upon the surveyor general's plat of Ambrose Rice's survey designated as "flag marsh" and "impassable marsh and water" in said town 9 south, range 9 east, and towns 9 and 10 south, range 10 east; and on May 28, 1881, duly certified his field-notes of said survey to the then Commissioner of the General Land Office.

This survey was so made, and the area surveyed so subdivided into sections and parts of sections, as to complete and render full, to the extent that the area so then surveyed was in form suitable therefor, the sections which in said Rice's survey were rendered fractional by omission and exclusion from said survey of area designated as "flag marsh" and "impassable marsh and water."

The boundary line on the westerly side of the area so sur-
25 veyed by said Marston, from the point 2.75 chains easterly of the section line between sections 21 and 22, in town 9, range

9, extending somewhat east of north to the southerly extremity of the west part of Cedar island is the shore of Maumee bay; and, the boundary line on the southerly and westerly sides of said survey, from the point 2.75 chains easterly of the said line between sections 21 and 22 extending southerly and easterly to the outlet of Crane creek, in section 11, town 10, range 10, is identical with the boundary line between the surveyed lands and the "flag marsh" and "impassable marsh and water," as shown upon the said plat of the survey made by Ambrose Rice.

12. In the line of his duty the surveyor general caused to be made descriptions of the lands so surveyed by said Marston, and plats of the said respective townships showing the subdivisions of the sections and marks of the corners of the land so surveyed and made return thereto to the General Land Office. That the subdivisions of said respective sections and parts of sections are shown and designated in and upon the said plats as described in the bill of complaint herein.

13. That on the 25th day of July, 1882, a patent issued to H. Mellville Hanna in the words and figures following:

"THE UNITED STATES OF AMERICA:

Chillicothe Series, Certificate No. 20133.

To all to whom these presents shall come, Greeting:

Whereas, H. Mellville Hanna, of Cuyahoga county, Ohio, has deposited in the General Land Office of the United States a certificate of the Commissioner and *ex officio* register of the Land Office at Washington, District of Columbia, whereby it appears that full payment has been made by the said H. Melville Hanna according to the provisions of the act of Congress of the 24th of April, 1820, entitled 'An act making further provision for the sale of public lands' and the acts supplemental thereto, for the lot numbered one of section fourteen in township nine, south of range nine east of Michigan meridian, in Ohio, containing forty-eight acres and five-hundredths of an acre according to the official plat of the survey of the said lands, returned to the General Land Office by the surveyor general, which said tract has been purchased by the said H. Mellville Hanna.

Now, know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts
26 of Congress in such case made and provided, have given and granted and by these presents do give and grant, unto the said H. Mellville Hanna, and to his heirs, the said tract above described. To have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said H. Mellville Hanna and to his heirs and assigns forever.

In testimony whereof, I, Chester A. Arthur, President of the United States of America, have caused these letters to be made

patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States the one hundred and seventh.

By the President:

CHESTER A. ARTHUR.
O. L. JUDD, *Ass't Secretary.*

[SEAL.] L. HARRISON,
Recorder of the General Land Office, ad Interim."

Other patents of same date and identical in form with this, except as to description, issued to said Hanna purporting to convey to him the lands in and by the said respective patents described, to wit:

"Lot numbered two of section fourteen in township nine south of range nine east of Michigan meridian, in Ohio, containing thirty-three acres and sixteen-hundredths of an acre."

"Lot numbered three of section fourteen in township nine south of range nine east of Michigan meridian, in Ohio, containing forty-nine acres and ninety-five-hundredths of an acre."

"The south half of the southwest quarter of section fourteen in township nine south of range nine east of Michigan meridian, in Ohio, containing eighty acres."

"The northwest quarter of the southwest quarter of section fourteen in township nine south of range nine east of Michigan meridian, in Ohio, containing forty acres."

"Lot numbered one of section fifteen in township nine south of range nine east of Michigan meridian, in Ohio, containing fifty-one acres and fifty-hundredths of an acre."

"Lot numbered two of section fifteen in township nine south of range nine east of Michigan meridian, in Ohio, containing thirty-eight acres and thirty-hundredths of an acre."

"Lot numbered three of section fifteen in township nine
27 south of range nine east of Michigan meridian, in Ohio, containing thirty-two acres and thirty-eight-hundredths of an acre."

"Lot numbered four of section fifteen in township nine south of range nine east of Michigan meridian, in Ohio, containing twenty acres and twenty-five-hundredths of an acre."

"The northeast quarter of the northeast quarter of section twenty-two, in township nine south of range nine east of Michigan meridian, in Ohio, containing forty acres."

"The east half of the southeast quarter of section twenty-two in township nine south of range nine east of Michigan meridian in Ohio, containing eighty acres."

"The south half of the northeast quarter of section twenty-two in township nine south of range nine east of Michigan meridian, in Ohio, containing eighty acres."

"Lot numbered four of section twenty-two, in township nine of

range nine east of Michigan meridian, in Ohio, containing forty-six acres and seventy-five-hundredths of an acre."

"Lot numbered five of section twenty-two, in township nine south of range nine east of Michigan meridian, in Ohio, containing fifty-four acres and sixty-hundredths of an acre."

"Lot numbered six of section twenty-two, in township nine south of range nine east of Michigan meridian, in Ohio, containing seventy-five acres."

"Lot numbered seven of section twenty-two in township nine south of range nine east of Michigan meridian, in Ohio, containing thirty-three acres and twenty-five-hundredths of an acre."

"Lot numbered one of section twenty-three in township nine south of range nine east of Michigan meridian, in Ohio, containing thirty-one acres and forty-five-hundredths of an acre."

"The west half of the northeast quarter of section twenty-three in township nine south of range nine east of Michigan meridian, in Ohio, containing eighty acres."

"The southeast quarter of the northeast quarter of section twenty-three, in township nine south of range nine east of Michigan meridian, in Ohio, containing forty acres."

"The north half of the southeast quarter of section twenty-three in township nine south of range nine east of Michigan meridian, in Ohio, containing eighty acres."

"The south half of the southwest quarter of section twenty-three in township nine south of range nine east of Michigan meridian, in Ohio, containing eighty acres."

28 "The north half of the southwest quarter of section twenty-three in township nine south of range nine east of Michigan meridian, in Ohio, containing eighty acres."

"The south half of the northwest quarter of section twenty-three in township nine south of range nine east of Michigan meridian, in Ohio, containing eighty acres."

"The north half of the northwest quarter of section twenty-three in township nine south of range nine east of Michigan meridian, in Ohio, containing eighty acres."

"The south half of the southeast quarter of section twenty-three in township nine south of range nine east of Michigan meridian, in Ohio, containing eighty acres."

"The lot numbered one of section twenty-four in township nine south of range nine east of Michigan meridian, in Ohio, containing twenty-one acres."

"Lot numbered two of section twenty-four in township nine south of range nine east of Michigan meridian, in Ohio, containing eighteen acres and ninety-eight-hundredths of an acre."

"Lot numbered three of section twenty-four in township nine south of range nine east of Michigan meridian, in Ohio, containing thirty-nine acres."

"Lot numbered four of section twenty-four in township nine south of range nine east of Michigan meridian, in Ohio, containing thirty-four acres and thirty-seven-hundredths of an acre."

"The southwest quarter of the southeast quarter of section twenty-

four in township nine south of range nine east of Michigan meridian, in Ohio, containing forty acres."

"The south half of the southwest quarter of section twenty-four in township nine south of range nine east of Michigan meridian, in Ohio, containing eighty acres."

"The northwest quarter of the southwest quarter of section twenty-four, in township nine south of range nine east of Michigan meridian, in Ohio, containing forty acres."

"Lot numbered five of section twenty-five in township nine south of range nine east of Michigan meridian, in Ohio, containing fifty-nine acres and thirty-hundredths of an acre."

"Lot numbered six of section twenty-five in township nine south of range nine east of Michigan meridian, in Ohio, containing thirty-one acres and seventeen-hundredths of an acre."

"Lot numbered seven of section twenty-five in township nine south of range nine east of Michigan meridian, in Ohio, containing sixty-four acres."

29 "The north half of the northeast quarter of section twenty-five in township nine south of range nine east of Michigan meridian, in Ohio, containing eighty acres."

"The south half of the northeast quarter of section twenty-five in township nine south of range nine east of Michigan meridian, in Ohio, containing eighty acres."

"The north half of the northwest quarter of section twenty-five in township nine south of range nine east of Michigan meridian, in Ohio, containing eighty acres."

"Lot numbered four of section twenty-six in township nine south of range nine east of Michigan meridian in Ohio, containing eighty-two acres and ninety-hundredths of an acre."

"Lot numbered five of section twenty-six in township nine south of range nine east of Michigan meridian, in Ohio, containing thirty-three acres and sixteen hundredths of an acre."

"The north half of the northeast quarter of section twenty-six in township nine south of range nine east of Michigan meridian, in Ohio, containing eighty acres."

"Lot numbered three of section twenty-seven in township nine south of range nine east of Michigan meridian, in Ohio, containing fifty-one acres and fifty-two-hundredths of an acre."

"Lot numbered seven of section twenty-nine in township nine south of range ten east of Michigan meridian, in Ohio, containing twelve acres and seventy-five-hundredths of an acre."

"Lot numbered one of section thirty in township nine south of range ten east of Michigan meridian, in Ohio, containing forty-one acres and fifty-three-hundredths of an acre."

"Lot numbered two of section thirty in township nine south of range ten east of Michigan meridian, in Ohio, containing thirty-two acres and fifty-hundredths of an acre."

"Lot numbered three of section thirty in township nine south of range ten east of Michigan meridian, in Ohio, containing twenty-six acres."

"Lot numbered four of section thirty in township nine south of

range ten east of Michigan meridian, in Ohio, containing twenty-one acres and seventy-five-hundredths of an acre."

"Lot numbered five of section thirty in township nine south of range ten east of Michigan meridian, in Ohio, containing thirty-five acres and eighty-two-hundredths of an acre."

"Lot numbered six of section thirty in township nine south
30 of range ten east of Michigan meridian, in Ohio, containing forty-nine acres and thirty-hundredths of an acre."

"The southwest quarter of the northwest quarter of section thirty in township nine south of range ten east of Michigan meridian, in Ohio, containing forty acres."

"The northeast quarter of the southwest quarter of section thirty in township nine south of range ten east of Michigan meridian, in Ohio, containing forty acres."

"The southwest quarter of the southeast quarter of section thirty in township nine south of range ten east of Michigan meridian, in Ohio, containing forty acres."

"Lot numbered five of section thirty-one in township nine south of range ten east of Michigan meridian, in Ohio, containing fifty-five acres."

"Lot numbered six of section thirty-one in township nine south of range ten east of Michigan meridian, in Ohio, containing thirty-seven acres and forty-hundredths of an acre."

"Lot numbered seven of section thirty-one in township nine south of range ten east of Michigan meridian, in Ohio, containing sixty-three acres and seventy-nine-hundredths of an acre."

"The northeast quarter of the northwest quarter of section thirty-one in township nine south of range ten east of Michigan meridian, in Ohio, containing forty acres."

"The southeast quarter of the northeast quarter of section thirty-one in township nine south of range ten east of Michigan meridian, in Ohio, containing forty acres."

"The north half of the northeast quarter of section thirty-one in township nine south of range ten east of Michigan meridian, in Ohio, containing eighty acres."

"Lot numbered one of section thirty-one in township nine south of range ten east of Michigan meridian, in Ohio, containing fifty-six acres and sixty-eight-hundredths of an acre."

"Lot numbered three of section thirty-two in township nine south of range ten east of Michigan meridian, in Ohio, containing thirty-nine acres and thirty-three-hundredths of an acre."

"Lot numbered four of section thirty-two in township nine south of range ten east of Michigan meridian, in Ohio, containing forty-three acres and ninety-eight-hundredths of an acre."

"Lot numbered five of section thirty-two in township nine south
of range ten east of Michigan meridian, in Ohio, containing
31 twenty-three acres and twenty-five-hundredths of an acre."

"Lot numbered six of section thirty-two in township nine south of range ten east of Michigan meridian, in Ohio, containing thirty-nine acres and eighty-five-hundredths of an acre."

"The northwest quarter of the southeast quarter of section thirty-

two in township nine south of range ten east of Michigan meridian, in Ohio, containing forty acres."

"The north half of the southwest quarter of section thirty-two in township nine south of range ten east of Michigan meridian, in Ohio, containing eighty acres."

"The south half of the northwest quarter of section thirty-two in township nine south of range ten east of Michigan meridian, in Ohio, containing eighty acres."

"Lot numbered one of section thirty-three in township nine south of range ten east of Michigan meridian, in Ohio, containing ninety-one acres and seventy-one-hundredths of an acre."

"Lot numbered one of section two in township ten south of range ten east of Michigan meridian, in Ohio, containing four acres."

"Lot numbered one of section three in township ten south of range ten east of Michigan meridian, in Ohio, containing twenty-seven acres and forty-six-hundredths of an acre."

"Lot numbered two of section three in township ten south of range ten east of Michigan meridian, in Ohio, containing fifty-six acres and fourteen-hundredths of an acre."

"Lot numbered three of section three in township ten south of range ten east of Michigan meridian, in Ohio, containing thirty-five acres and sixty-hundredths of an acre."

"Lot numbered four of section three, in township ten south of range ten east of Michigan meridian, in Ohio, containing twenty-one acres and eight-hundredths of an acre."

"The west half of the southwest quarter of section three, in township ten south of range ten east of Michigan meridian, in Ohio, containing eighty acres."

"The southeast quarter of the southwest quarter of section three in township ten south of range ten east of Michigan meridian, in Ohio, containing forty acres."

"Lot numbered one of section four in township ten south of range ten east of Michigan meridian, in Ohio, containing forty-seven acres and eighty-hundredths of an acre."

32 "Lot numbered two of section four in township ten south of range ten east of Michigan meridian, in Ohio, containing thirty-four acres and ninety-hundredths of an acre."

"Lot numbered three of section four in township ten south of range ten east of Michigan meridian, in Ohio, containing fifty-eight acres and eighty-five-hundredths of an acre."

"Lot numbered four of section four in township ten south of range ten east of Michigan meridian, in Ohio, containing forty-four acres and fifty-eight-hundredths of an acre."

"The southwest quarter of the northeast quarter of section four in township ten south of range ten east of Michigan meridian, in Ohio, containing forty acres."

"The north half of the southeast quarter of section four in township ten south of range ten east of Michigan meridian, in Ohio, containing eighty acres."

"The south half of the southeast quarter of section four in town-

ship ten south of range ten east of Michigan meridian, in Ohio, containing eighty acres."

"The east half of the northwest quarter of section four in township ten south of range ten east of Michigan meridian, in Ohio, containing eighty acres."

"The east half of the southwest quarter of section four in township ten south of range ten east of Michigan meridian, in Ohio, containing eighty acres."

"Lot numbered five of section nine in township ten south of range ten east of Michigan meridian, in Ohio, containing seventeen acres and fifty-one-hundredths of an acre."

"Lot numbered six of section nine in township ten south of range ten east of Michigan meridian, in Ohio, containing thirty-six acres and seventy-three-hundredths of an acre."

"Lot numbered six of section ten in township ten south of range ten east of Michigan meridian, in Ohio, containing twenty-nine acres and eighty-hundredths of an acre."

"The lot numbered seven of section ten in township ten south of range ten east of Michigan meridian, in Ohio, containing thirty acres and thirty-nine-hundredths of an acre."

"Lot numbered eight of section ten in township ten south of range ten east of Michigan meridian, in Ohio, containing sixty-four acres and fifty-five-hundredths of an acre."

"Lot numbered nine of section ten in township ten south
33 of range ten east of Michigan meridian, in Ohio, containing twenty-one acres and seventy-one-hundredths of an acre."

"Lot numbered two of section eleven in township ten south of range ten east of Michigan meridian, in Ohio, containing twenty-two acres and ten-hundredths of an acre."

"Lot numbered three of section eleven in township ten south of range ten east of Michigan meridian, in Ohio, containing thirty-eight acres."

"Lot numbered four of section eleven in township ten south of range ten east of Michigan meridian, in Ohio, containing thirty-six acres."

"Lot numbered five of section eleven in township ten south of range ten east of Michigan meridian, in Ohio, containing thirty-four acres and sixty-one-hundredths of an acre."

"The north half of the southwest quarter of section eleven in township ten south of range ten east of Michigan meridian, in Ohio, containing eighty acres."

"The south half of the northwest quarter of section eleven in township ten south of range ten east of Michigan meridian, in Ohio, containing eighty acres."

14. On June 14, 1884, a patent issued to Philip Lacourse, reading thus:

"THE UNITED STATES OF AMERICA:

Certificate No. 20232.

To all to whom these presents shall come, Greeting:

Whereas, Philip Lacourse, of Lucas county, Ohio, has deposited in the General Land Office of the United States a certificate of the Commissioner and *ex officio* register of the Land Office at Washington, D. C., whereby it appears that full payment has been made by the said Philip Lacourse according to the provisions of the act of Congress of the 24th of April, 1820, entitled 'An act making further provision for the sale of the public lands' and the acts supplemental thereto for the lots numbered one and six of section eleven in township ten south of range ten east of Michigan meridian, in Ohio, containing ninety-nine acres and forty-one-hundredths of an acre, according to the official plat of the survey of the said lands, returned to the General Land Office by the surveyor general, which said tract has been purchased by the said Philip Lacourse.

Now, know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said Philip Lacourse and to his heirs the said tract above described. To have and to hold the same, together with all the rights, privileges, immunities and appurtenances of whatsoever nature, thereunto belonging unto the said Philip Lacourse and to his heirs and assigns forever.

34

In testimony whereof, I, Chester A. Arthur, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the fourteenth day of June, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and eighth.

By the President:

[SEAL.] CHESTER A. ARTHUR,
By W. H. CROOK, *Secretary.*

S. W. CLARK,
Recorder of the General Land Office."

15. That all right and title conveyed by the United States to said Chester W. Norton, H. Mellville Hanna and Philip Lacourse respectively, in and by the said respective patents, hath been by mesne conveyances conveyed to complainant herein more than four years prior to the commencement of this suit and was then and continuously thereafter to and at the commencement of this suit vested in the said complainant.

16. At the time of the making of the survey by Ambrose Rice the waters of Lake Erie were above their ordinary stage and there was more than the usual volume of water standing upon the land

in controversy herein and flowing to and upon the same from the large bodies of land now in Ottawa, Wood and Lucas counties, respectively, having their drainage to and through the said premises in controversy herein.

17. The general character, description and condition of the said land surveyed by said Marston was by him correctly set forth under the title "General description" in the field-notes of the said survey so as aforesaid by him certified to the Commissioner of the General Land Office.

That concerning the portion of said survey in town 9 south, range 9 east, reciting, to wit:

"The surface of that part of this fractional township, comprised in this survey, is covered with a deep marsh of grass, canes or reeds, wild rice, etc. Many parts of it particularly in the south and west parts are mown for a kind of coarse hay. Other parts are
35 filled with bogs and pond holes that do not dry in summer. It receives the natural drainage from the woods on the south and west, which without any well-defined channel, finds its way across the marsh to the lake. Again in heavy gales of wind it is subject to inundations from the lake, which upon the subsidence of the gale or change of direction in the wind, slowly finds its way out again into the lake. It is bounded along the lake by a sand beach averaging 1 chain in width, and 3 feet in height."

That concerning the portion of said survey in town 9 south, range 10 east, reciting, to wit:

"The surface of this fractional township is covered with a deep marsh of grass, canes or reeds, wild rice, etc. Much of the south part can be mown for marsh hay, being in a measure drained by a canal that has been constructed in the twp. south. Other parts are filled with bogs and pond holes that do not dry in summer. It receives the drainage from wood on the south and west, which spreads over the entire surface and without any positive channel finds its way to the lake.

"Again the twp. is subject to inundations from the lake during heavy gales of wind which upon the termination of the gale, or a change in the direction of the wind, slowly finds its way back into the lake.

"This fractional twp. is bounded on the northeast by Lake Erie, between the lake and the marsh proper, is a sand beach, averaging 3 feet high and 1 chain in width, generally covered with bushes and small trees of oak, poplar, willow and cottonwood."

That concerning the portion of said survey in town 10 south, range 10 east, reciting, to wit:

"The description for this township must necessarily be similar to that of the two preceding townships. The surface of that part of the twp. comprised in this survey is one large swampy marsh, land generally very wet and boggy. Its surface is covered with grass canes (or joint grass) wild rice, and such like marsh productions, reaching to a height of ten or more feet. Some parts, especially on sec. 10 & 11 can be pastured, but the larger portion is filled with bogs and pond holes, connected by narrow and tortuous channels.

"It receives the drainage from the woods on the south and west and is subject to inundations from the lake. On the prevalence of strong S. W. winds this water flows from the marsh into the lake, and upon the occurrence of N. E. winds the lake floods the marsh. The principal outlets and inlets are Crane creek and Ward's canal.

36 This canal is an improvement made by C. B. Ward, of Detroit, Michigan, on sec. 4, and running across sec. 5 for the purpose of getting vessels and ship timber from his ship yard on sec. 5. It is built without locks and is really only a great ditch. Waterway 50 feet. Depth 7 feet. The buildings (or sheds) at the fishing stations 4 & 11 are the only other improvements."

A comparison of the survey made by Ambrose Rice in 1834 and 1835, with that made by John B. Marston in 1881, indicates that Sandy and Crane islands washed somewhere shoreward during the period intervening between the making of said respective surveys.

18. By reason of unusual drouth which during the years 1893, 1894 and 1895, prevailed quite generally over the region of country from which Lake Erie and its tributaries derive their waters, including that the drainage whereof was to and through the premises in controversy, the major portion of the said premises was dry during the summer of 1895, except in case of heavy local rains or when the adjacent waters of Lake Erie were higher than they usually were during that summer.

19. Evidence may be offered by and on behalf of either party whereby to establish or controvert the truth of any matter not herein agreed upon and concerning which issue is joined by the pleadings in said cause.

20. The copies of field-notes set forth as "Exhibit C" and "Exhibit D" and the copy of circular set forth as "Exhibit G" in the printed record in the case of James *v.* Howell and James *v.* Farley, lately pending in Lucas county, Ohio, district court, and the "blueprint" copy of profile showing stages of water in Lake Erie as observed and recorded by the U. S. Government office, at Cleveland, Ohio, and the plats of townships 9 south, in range 9 east, and 9 and 10 south, in range 10 east, certified by S. M. Lamoreux, as Commissioner of the General Land Office on January 3, 1896, and the plats and field-notes of parts of same townships as surveyed by John B. Marston and certified by Wm. A. J. Sparks, as Commissioner of the General Land Office, on April 28, 1885, shall be admissible as evidence for any and every purpose and of the same effect as duly authenticated and certified exemplification of the original subject to the right of either party to prove by competent evidence any clerical, typographical or other error in any such copy.

POTTER & EMERY,
Attorneys for Complainant.
H. T. NILES AND
F. C. DAUGHERTY,
Attorneys for Defendants.

37 Endorsement on agreed statement of facts: U. S. circuit court, N. dist. of Ohio. No. 1311. Cedar Point Club *v.* Niles *et al.* Filed Jun- 22, 1896. Irvin Belford, clerk.

The United States Court for the Northern District of Ohio, Western Division.

THE CEDAR POINT CLUB
vs.
HENRY T. NILES ET AL.

Testimony of Elmer L. Spofford.

ELMER L. SPOFFORD, being first duly sworn, being a witness called in behalf of the defendant-, testified as follows, upon examination by Mr. Niles:

Q. Your name, residence and occupation?

A. Elmer L. Spofford, my residence is Bowling Green, Ohio, and my occupation is that of a civil engineer.

Q. Please state what means you have of knowing of the drainage from Wood, Ottawa and Lucas counties, through the Cedar Point marsh into Lake Erie?

A. I am the engineer on the Cedar Point Creek joint ditch, that is 30 miles in length. There are about 19 miles of that ditch in Wood county. From the point where it crosses the Wood County line, between Wood and Ottawa the distance is about 11 miles through to its outlet.

Q. And what other drainage is there?

A. South of this creek is Crane creek, it has its initial point in Wood county. The length of that I don't remember. It is some years since I took the levels on that. If I remember rightly it is about 9 miles in Wood county, or in that neighborhood.

Q. How far from there to its outlet?

A. As I understand from the surveyor of Ottawa county it is between 16 and 17 miles.

Q. What other creek is there?

A. To the north of Cedar creek and as a tributary to it in Wood county is what is known as Dry creek, 13 miles in length which discharges its waters into Cedar creek, about one mile east of the Wood County line in Ottawa county. North of that—I am starting in section 33 Ross township—is what is known as Wolf creek, this runs to the north and east through this township of Ross
38 and discharges its waters in the marsh somewheres—I don't know the outlet.

Q. I understand you to say that Wolf Creek ditch drains into this marsh?

A. It discharges its waters to the northeast. I was just mentioning the drainage of the Wood County lines giving the main channels.

Mr. NILES:

Q. Are all these ditches in the line of the natural drainage of the county?

A. So far as I know in Wood county.

Q. What scope of country in Wood, I mean of the upland in

Wood, Ottawa and Lucas in your judgment naturally drains through these water-courses?

A. In Wood county what is known as Crane creek drains about eight thousand eight hundred and fifty acres—I would put that at nine thousand acres that creek drains in Wood county.

Q. How much in Ottawa?

A. I could not answer that except approximately. It would drain about fourteen thousand acres or fifteen more nearly.

Q. Dry and Cedar creek?

A. Taken together they will drain a territory in Wood county of about twenty-four thousand acres.

Q. In Ottawa and Lucas?

A. I am not so familiar with the drainage for the reason there was a vast amount of territory that drained into this creek when it was under the joint board of commissioners. I should judge about twenty thousand acres would naturally drain into this creek from Ottawa and Lucas.

Q. How much into Wolf creek?

A. The record shows there has been assessed in Wolf creek, 6,258 acres.

Q. Taking all this the drainage is all to the northeast?

A. Yes, sir.

Q. There is one more creek that drains into Crane creek known as —— creek about five miles long in Wood county?

A. This drains a portion of Ottawa county and discharges its waters through Crane creek—this creek I should judge would drain about three thousand acres of land.

Q. Taking all this land together, what, in your judgment would be a safe estimate as to the amount of land naturally drained through all these channels you have mentioned?

39 A. I think sixty thousand acres would be a safe estimate.

Q. There has been more than that assessed, has there not?

A. Well, I did not have time to look up the record thoroughly of Cedar creek. I think a safe estimate is sixty thousand acres.

Cross-examination.

By Mr. POTTER:

Q. Crake creek is the easterly boundary of these premises in controversy, is it not?

A. I don't know.

Q. Have you been down to the mouth of Crane creek?

A. I have never been down on the line so far as the waters of Cedar creek run.

Q. Do you know the length of Crane creek from the Wood County line to Lake Erie?

A. No, sir; I have only the statement of the engineer of Ottawa county.

Q. The Wolf creek you spoke of empties into Maumee bay about two miles west of these premises?

A. Somewheres along there.

Q. The drainage you speak of is into Crane creek and Wolf creek?

A. No, Crane creek and Cedar creek—they are two separate creeks.

Q. What you call Wolf Creek ditch enters Wolf creek how far from the marsh land?

A. That I can't say, I was not the engineer on that ditch. The water that comes down from this territory passes through these fractional sections bordering on the marsh and into Crane creek, Cedar creek and Wolf creek.

Mr. NILES (to the court): We offer in evidence a certified copy of the transactions of the land office on the claim of the State of Ohio for this land in controversy, certified January 26th, 1896, by S. W. Lamoreux of the General Land Office.

(Objection to the paper by Mr. Emery, objection overruled, exception.)

Noon adjournment.

Endorsement on testimony of Spofford: No. 1311. U. S. circuit court, northern district of Ohio, western division. The Cedar Point Club *vs.* Henry T. Niles *et al.* Testimony of Elmer L. Spofford, given before Hon. A. J. Ricks June 22, 1896.

40 B. C. U., Jr.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, E. M.
WASHINGTON, D. C., *January* 22, 1896.

I, S. W. Lamoreux, Commissioner of the General Land Office, do hereby certify that the annexed copies of office letters of September 29, 1852 (with inclosure); October 5, 1852; January 23, 1872, and March 25, 1872, relating to the claim of the State of Ohio, under the swamp-land grant are true and literal exemplifications of the records in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. W. LAMOREUX,
[SEAL.] *Commissioner of the General Land Office.*

GENERAL LAND OFFICE, *September 29th*, 1852.

Register, Defiance, Ohio.

SIR: I herewith enclosed you a copy of list No. 2, of swamp and overflowed lands, selected within your district, under the act of 28th September, 1850, which has been rejected, for the reasons therein assigned.

You will please enter all the tracts embraced in this list, on your tract books as directed, in my letter of this date accompanying list

No. 1, with the exception of entering them "Approved; see list No. 1" you will say "Rejected; see list No. 2."

Very respectfully, your ob't serv't,

E. A. CABELL,
Acting Commissioner.

41 List No. 2, Defiance, Ohio. Rejected for the reasons assigned below.

SEPTEMBER 29, 1852.

Swamp lands.

Parts of sections.	Section.	Township.	Range.	Surveyed area.		Unsurveyed area.		Total area.	
				Acres.	*Hdths.*	*Acres.*	*Hdths.*	*Acres.*	*Hdths.*
South of the base line and east of the first meridian.									
¼ S. W. ¼ of S. W. ¼....	4	1 S.	1 E.	40	00	Sold in 1837.			
North of the base line and east of the first meridian.									
2—111 S. E. ¼..	3	4 N.	2 E.	160	00	Sold in 1836.			
* E. ½ of N. E. ¼..	23	"	"	80	00	W. & E. canal land.			
4—60 W. ½ of N. W. ¼..	24	2 "	4 "	80	00	M. & D. canal act 24 May, 1828.			
7—53 W. ½ of N. E. ¼..	17	2 "	7 "	80	00	Sold in 1828.			
Lot No. 1, or N. E. ¼ of 10—2734 N. E. ¼..	20	6 "	16 "	40	00	Sold in 1832.			
Big Spring reservation.									
N. ½ of N. E. ¼ & N. ½ Ad. 1—155 of N. W. ¼.. W. frl. part, & S. E. ¼ of Ad. 1—35 N. W. ¼.. N. W. ¼ of S. E. ¼..... Ad. 1—35.	25 30 30	1 N. 1 " 1 "	12 E. 13 " 13 "	160 117 40	00 44 00	To be sold for the benefit of Indians under treaty stipulation and not subject to selection as "swamp lands."			
Disputed territory north of the old State line.									
Deep. Vol. and page not given. } Marsh covered with wa..		9 S.	9 E.			2,500	00	Not swamp and not sold.	
} Same.....		9 S.	10 "			1,500	00		
} Same.....		10 "	10 "			2,000	00		
Total area rejected...				717	44	6,000	00	6,717	44
								80	
								6,797	44

* See letter to register, Jan. 10th, 1853.
P. D.

Endorsed on the back of the foregoing list is the following, to wit:
List No. 2. Swamp lands, Defiance, Ohio.
Rejected Sept. 29, '52.
Rejection registered October 8th, 1852. H. D.
Certified copy sent to governor of Ohio with letter 5th Oct., 1852. P. D.
Copy of this list sent to reg'r at Defiance, Ohio, with act'g com'r letter dated 29 Sept., 1852. P. D.

GENERAL LAND OFFICE, *October 5th*, 1852.

His excellency the governor of Ohio, Columbus, Ohio.

SIR: I have the honor herewith to inclose you a certified copy of list No. 2, of lands selected for the State of Ohio, within the Defiance

land district, as swamped and overflowed lands, enuring to said State under the provisions of the act of Congress, approved
42 September 28th, 1850, which has been rejected for the reasons therein assigned, under the head of "Remarks."

With great respect, your ob't serv't,

JOHN WILSON,
Commissioner.

"K." DEPARTMENT OF THE INTERIOR,
H. A. W. GENERAL LAND OFFICE,
E. K. WASHINGTON, D. C., *January 23d*, 1872.

Hon. John Sherman, U. S. Senate.

SIR: I have the honor to acknowledge the receipt by reference from you, of the communication from Ralph Leetes, Esq., of Ironton, Ohio, dated the 13th inst., relative to lands in the State of Ohio.

In reply to that portion of Mr. Leete's letter respecting swamp lands, I have to state that an examination of our records shows that in 1850, a list of lands were reported to this office as swamp selections enuring to the State of Ohio embracing 32,438.15 acres, of which 25,640.71 acres were patented to the State as swamp, February 19th, 1853, and the remaining 6,797.44 acres were rejected by this office Sept. 29, 1852, for reasons stated on list (copy herewith marked "A") and the State authorities so informed by letter same date.

In 1857, another list, embracing 21,999.99 acres was reported as swamp selections, but no action was had thereon with a view to patenting, as the tracts embraced therein were found to be alternate sections within the five-mile limits of canal grants, and it was decided by the Secretary of Interior Nov. 20, 1855, that such alternate sections did not enure to the State under the act of Sept. 28th, 1850, although they might be shown to be actually swamp and overflowed lands.

The remaining inquiries of Mr. Leete will be the subject of another letter.

Very respectfully, your ob't serv't,

WILLIS DRUMMOND,
Commissioner.

43 *"Copy of List 'A,' as Above Indicated."*

List No. 2, Defiance, Ohio. Rejected for the reasons assigned below.

Swamp lands. SEPTEMBER 29, 1852.

	Sec.	Twp.	R.	Surveyed area. Acres.	Hdths.	Remarks.
South of the base line and east of the first meridian.						
S. W. ¼ of S. W. ¼	4	1 S.	1 E.	40	00	Sold in 1837.
North of the base line and east of the first meridian.						
S. E. ¼	3	4 N.	2 E.	160	00	Sold in 1836.
*E. ½ of N. E. ¼	23	"	"	80	00	W. & E. canal land.
W. ½ of N. W. ¼	24	2 "	4 "	80	00	M. & D. canal act, 24 May, 1828.
W. ½ of N. E. ¼	17	2 "	7 "	80	00	Sold in 1828.
Lot No. 1, or N. E. ¼ of N. E. ¼	20	6 "	16 "	40	00	Sold in 1832.
Big Spring reservation.						
N. ½ of N. E. ¼, & N. ½ of N. W. ¼	25	1 N.	12 E.	160	00	To be sold for the benefit of Indians under treaty stipulations and not subject to selection as "swamp lands."
W. frl. part, & S. E. ¼ of N. W. ¼	30	1 "	13 "	117	44	
N. W. ¼ of S. E. ¼	30	1 "	13 "	40	00	
Disputed territory north of the old State line.						
						Unsurveyed area. / Total area.
Deep marsh covered with wa		9 S.	9 E.			2,500 00
Same		9 S.	10 "			1,500 00
Same		10 "	10 "			2,000 00
Total area rejected				717	44	6,000 00 / 6,717 44 / 80 / 6,797 44

*See letter to register, Jan. 10th, 1853. P. D.

K.
H. A. W.
E. K.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Mar.* 25, 1872.

Hon. C. Delano, Secretary of the Interior.

SIR: I have the honor to acknowledge the receipt by reference from you, of the communication from Chas. I. Wetmore, Esq., of Columbus, Ohio, dated the 18th inst. relative to swamp lands in the State of Ohio. In reply I have to state that an examination of our records shows that swamp-land selections amounting to 54,438.14 acres, were reported to this office as enuring to the State of Ohio, under the act of Sept. 28, 1850, selected and disposed of as follows, viz:

44 In 1850 a list of lands was reported as swamp selections enuring to the State, embracing 32,438.15 acres, of which amount 25,640.71 acres were patented to the State as swamp lands Feb'y 19, 1853, and the remaining 6,797.44 acres were rejected by this office for reasons stated in our letter to the State authorities of date Sept. 29th, 1852.

In 1857, another list embracing 21,999.99 acres was reported as swamp-land selections, but no action was had thereon with a view to patenting as such, for the reason that the tracts embraced in said list, were found to be alternate sections, within the five-mile limits of canal grants, it having been decided by the Secretary of the Interior, by letter dated Nov. 20, 1855, that such alternate sections did not enure to the State under the swamp grant. The above embrace all the swamp-land selections, reported to this office as enuring to the State of Ohio, under the act of Sept. 28th, 1850, as shown by the records of this office.

Mr. Wetmore's letter is herewith returned.

I have the honor to be, very respectfully, your ob't s'v't,

WILLIS DRUMMOND,
Commissioner.

Endorsement on certified copies of letters, &c., from the General Land Office: No. 1311. U. S. circuit court, northern district of Ohio, western division. Cedar Point Club *vs.* Henry T. Niles *et al.* Certified copies of letters, &c., from General Land Office. Filed June 26, 1896. Irvin Belford, clerk.

EXHIBIT "G."

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *May* 2, 1878.

I, J. A. Williamson, Commissioner of the General Land Office, do hereby certify that the annexed printed circular is a true and literal exemplification of the circular in regard to the survey of the beds of meandered lakes, etc., issued by this office under date of July 13, 1874.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

J. A. W. MUMM,
[SEAL.] *Commissioner of General Land Office.*

45 *Circular.*

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *July* 13, 1874.

As inquiries arise in regard to the survey of the beds of meandered lakes or other similar bodies of water in districts where the office of surveyor general has been discontinued, the following is communicated as defining the conditions under which such lake beds are regarded as surveyable, and as giving the proper mode of proceeding to have the same surveyed and to obtain title thereto:

The beds of lakes (not navigable) sloughed, and ponds over which the lines of the public surveys were not extended at the date of the

original survey, but which from the presence of water at the date of such survey were meandered, are held to be the property of the United States; and whenever, by evaporation or the operation of any other cause, natural or artificial, the waters of such lake, slough, or pond have so permanently receded or dried up as to leave within the unsurveyed area dry land fit in ordinary seasons, for agricultural purposes, such dry land is subject to survey and sale under the general laws regulating the disposal of the public domain.

Such surveys will be ordered, and, upon approval, disposition proceeded with in the following cases:

1st. Where the waters have so far permanently receded or disappeared as to permit during the ordinary surveying season (not on the ice), the actual extension of the lines of survey, and the establishment and marking of corners in the manner required by law, over the whole area of the bed of such former lake.

2d. Where the waters have not generally disappeared, but where they have so far permanently receded as to leave a margin of dry land fit for cultivation between the original meandered lines and the remaining waters of sufficient area to admit of the survey and the establishment of at least three of the corners of a quarter section.

3d. The Commissioner of the General Land Office will consider the question of ordering a survey of margins not admitting the laying off of one hundred and sixty acres, but not less than forty acres.

Parties desiring the survey of such lands may make application in writing to the Commissioner of the General Land Office, therefor, stating the approximate area, and the situation of the
46 tract with reference to the section, township, and range of the public surveys, the same to be illustrated by a diagram; the fact that the waters have disappeared in the manner or to the extent as specified in one of the three several above-specified cases, such statement to be accompanied with the affidavit of at least two creditable and disinterested witnesses as to the disappearance of the waters, the probable quantity of land capable of being surveyed in the whole area lying between the original meandered line and the then margin of the waters, and showing what portion of such area is fit for agricultural purposes. To insure prompt attention and decision by this office, both the statement and affidavit required must be full and specific.

If, upon examination of such statement, diagram, and proof, it is found that such survey may be properly allowed, the parties applying will be so notified, and upon their designating to this office the name and residence of some competent and reliable surveyor, together with a statement from him in writing of the amount for which he is willing to execute the field-work of the survey, and a certificate of some United States depositary that the amount specified has been deposited to the credit of the United States "on account of individual depositors," the Commissioner will then issue the necessary instructions to the surveyor to enable him to execute the field-work of survey in accordance with the public land system.

To correct what seems to be a very general misapprehension as

to the manner in which persons may proceed to perfect title who have made actual settlement on lands of the character herein designated, and who claim or propose to claim, under the pre-emption laws of the United States, it is remarked that in no event and at no stage of the proceedings can their declaratory statements be received or filed in this office. Such declaratory statements must be filed in the local land office and cannot be there received until after such survey has been made and the approved plat thereof filed in the local office.

It is proper to further state that the fact of having borne the expense of survey will give no priority of claim or right, under existing laws, to purchase the land, or in any manner affect the vested interest of any party thereto, should such exist, as the land when surveyed, will be subject to disposal according to the laws of Congress and the regulations of this office relative to the disposal of lands embraced in fragmentary survey.

In case the lake bed is small and is so situated that no township, section or quarter-section corners will need to be established
47 by reason of such lake being situated within a given section or sections fully surveyed, no deposit will be required; and upon proof being furnished this office as above of the disappearance of the water, the premises will be platted, and the land can then be disposed of under existing laws.

Respectfully,

S. S. BURDETT,
Commissioner.

Endorsement on Exhibit "G:" No. 1311. U. S. circuit court, northern district of Ohio, western division. Cedar Point Club *vs.* Henry T. Niles *et al.* Copy of circular, "Exhibit G." Filed June 22, 1896. Irvin Belford, clerk.

Case Heard and Taken under Advisement.

June Term, A. D. 1896, to wit, June 22d, 1896.

Present: Honorable Augustus J. Ricks, U. S. district judge.

THE CEDAR POINT CLUB
vs.
HENRY T. NILES ET AL. } No. 1311. Chancery.

This day came the parties by their attorneys and solicitors and thereupon this case came on to be heard upon the pleadings and evidence. And the court having heard the evidence and the argument of counsel continued said cause for further consideration.

Continuance.

June Term, A. D. 1896, to wit, November 5th, 1896.

Present: Honorable Augustus J. Ricks, U. S. district judge.

THE CEDAR POINT CLUB
vs.
HENRY T. NILES ET AL. } No. 1311. Chancery.

This cause is continued until the next term of this court.

48 *Leave to File Amendment to Bill of Complaint.*

December Term, A. D. 1896, to wit, January 15th, 1897.

Present: Honorable E. S. Hammond, U. S. district judge, sitting by designation.

THE CEDAR POINT CLUB
vs.
HENRY T. NILES ET AL. } No. 1311. Chancery.

This day came The Cedar Point Club, complainant in said above cause, by its solicitors Potter & Emery, and presented to the court for its allowance and filing an amendment to the original bill of complaint filed herein. And the court having considered the same, and the parties defendant by their solicitors consenting thereto, does now here approve of the same and permit and order the same to be filed herein, and said defendants severally waive all right and day wherein to plead to said amendment.

Amendment to Bill of Complaint.

In the Circuit Court of the United States, Northern District of Ohio, Western Division.

THE CEDAR POINT CLUB, Plaintiff,
vs.
HENRY T. NILES, GERTRUDE J. NILES, Frank Niles, Moses Burdo, and Black La Corse, Defendants. } No. 1311. In Equity.

Amendment to bill of complaint.

The said complainant still insisting and relying upon all and singular the several matters in and by its original bill set forth, averred and charged, by leave of court first obtained, makes and files this amendment to its said bill of complaint herein, and as and for and by way of such amendment thereto, saith:

The said complainant upon information and belief avers to be true all and singular the matters recited and set forth in and by items numbered two to eighteen, inclusive, of the agreed statement

of facts subscribed by the parties and filed herein, and by
49 reference adopts and makes the same a part hereof the same as if herein fully and at large set forth in the same words and figures.

Complainant herein further contends and avers that under and by virtue of the United States statutes in force in the years 1833 and 1834, providing for and governing the survey of the public land, the making of the survey as made by said Rice, the return of the field-notes, map and plat thereof by the surveyor general to the Commissioner of the General Land Office and his approval thereof, and the sale and patent of said fractional sections under and in pursuance of and as described in said survey and plat, constituted the said line bordering said fractional sections on the one side and said marsh upon the other, a boundary line of the lands so patented, and leaving in the United States Government the title to the lands designated as impassable marsh and water, while defendants herein contend that by virtue of said statutes and survey thereunder, the said line was and is in every respect and particular the ordinary meander line, ascertained and regarded solely for the purpose of ascertaining and evidencing area of land to be paid for and in no-wise defining the area or boundary of the fractional section or subdivision surveyed and patented.

Complainant further avers that the defendant Henry T. Niles is the husband of the answering defendant Gertrude J. Niles, and the others of said defendants were in the matters and acts in said bill complained of against them the agents, servants and tenants of said Gertrude J. Niles, and claim to justify their said acts solely under and by virtue of the supposed and claimed title and right of said Gertrude J. Niles.

That the nature and character of the said lands hath been and is such that the acts and doings thereon committed as complained of by and under authority of the said defendants, are not in the nature of continuous and exclusive possession and control, and thus if wrongful constituting the foundation of a single action or a small number of actions of trespass, but on the contrary consisting mainly of a vast number of occasional and casual acts producing inconsequential and inconsiderable damage, and if wrongful constituting foundation for a great number of actions at law, the prosecution and defense whereof would be greviously burdensome to all parties and interests herein. And the said defendants at the commencement of this suit threatened to continue the said occasional and casual invasions and uses of the said premises.

50 Wherefore the said complainant prays decree as in its original bill.

POTTER & EMERY,
Solicitors for Complainant.

UNITED STATES OF AMERICA,
Northern District of Ohio,
Western Division, Lucas County, } ss:

On the 8th day of January, A. D. 1897, before me personally appeared E. D. Potter, Jr., one of the attorneys for the complainant above named, who being by me duly affirmed, deposes and says that he is one of the attorneys for the Cedar Point Club, familiar with its business, and that he has read the foregoing amendment to bill of complaint and knows the contents thereof. That the same is true of his knowledge except as to the matters therein stated on information and belief and as to these matters he believes it to be true.

E. D. POTTER, JR.

Subscribed and sworn to before me this 8th day of January, A. D. 1897.

[SEAL.] J. W. LYONS,
Notary Public, Lucas County, Ohio.

Stipulation.

The defendants herein hereby assent to the filing of the within amendment and to the making of items two to eighteen inclusive, of the agreed statement of facts herein by reference a part of said amendment as in and by said amendment purported to be done; and do hereby admit to be true the matters set forth in and by said amendment and said items of said agreed statement of facts, and that the controversy between the parties herein is correctly stated in and by said amendment and deem it unnecessary to plead and therefore waive all right and day wherein to plead to said amendment.

Jan'y 8, 1897.

HENRY T. NILES,
FRANK C. DAUGHERTY,
Solicitors for Gertrude J. Niles, Defendant.

HENRY T. NILES,
Solicitor for Himself and All the Other Def'ts.

51 Endorsement on amendment to bill of complaint. No. 1311. U. S. circuit court, north. dist. of Ohio, west. div. The Cedar Point Club *vs.* Henry T. Niles *et al.* Amendment to bill of complaint. Filed Jan. 15, 1897. Irvin Belford, clerk. Potter & Emery, attorneys, Toledo, Ohio.

Continuance.

December Term, A. D. 1896, to wit, April 17th, 1897.

Present: Honorable Henry F. Severens, U. S. district judge. Sitting by designation.

THE CEDAR POINT CLUB
vs.
HENRY T. NILES ET AL. } No. 1311. Chancery.

This cause is continued until the next term of this court.

Decree.

June Term, A. D. 1897, to wit, June 12th, 1897.

Present: Honorable John M. Harlan, circuit justice.

THE CEDAR POINT CLUB, Complainant,
vs.
HENRY T. NILES, GERTRUDE J. NILES, FRANK Niles, Moses Burdo, and Black La Corse, Defendants.

No. 1311. Equity. Decree.

This day came The Cedar Point Club, party complainant, by its solicitors, Potter & Emery, and also the said defendants, Henry T. Niles, Gertrude J. Niles, Frank Niles, Moses Burdo and Black La Corse, by their solicitors F. C. Daugherty and Henry T. Niles. And thereupon this cause came on for hearing and was heard upon the complainant's original bill and amendment thereto, the answer of the defendant, Gertrude J. Niles, and the replication of the complainant, the pleadings, evidence and agreed statement of facts; and was argued by counsel.

And the court being now fully advised in the premises does find upon the issues joined in favor of said complainant and against said defendants; and further that all and singular the facts set forth in said complainant's bill and amendment thereto are true in substance and in fact and that it is in equity entitled to the relief prayed for therein.

52 The court further finds that at the time of bringing this action said complainant was in possession of all and singular the real property set forth and described in its said bill and that it had and has the legal estate in and was and is entitled to the possession of the same. That neither of said defendants nor any one of them have any estate in or are entitled to the possession of said real estate or any part thereof and that the plaintiff ought to have its title and possession quieted as against the said Gertrude J. Niles, her heirs, executors, administrators and assigns, as well as against each and every one of said defendants, as prayed for in complainant's said bill.

Wherefore it is ordered, adjudged and decreed that the title and possession of the said Cedar Point club, to all and singular the premises described in the bill, to which reference is here made for more particularity, be and the same is hereby quieted as against said defendants, Gertrude J. Niles, her heirs, executors, administrators and assigns, as well as against each and every of said defendants therein, and they all and singular are hereby forever enjoined from setting up any claim to said premises or any part thereof adverse to the title and possession of the said Cedar Point club, its successors or assigns, thereto. And the said defendants all and singular are hereby enjoined and restrained from any further violation of said complainant's rights and are perpetually enjoined and restrained together with their agents, servants, employés or assigns from fur-

ther entering upon said premises of said complainant or cutting hay therefrom, or ploughing the same, or herding or pasturing cattle thereon.

It is further ordered that the costs in this case, to be taxed be paid by the said defendant, Gertrude J. Niles and that execution issue therefor.

Thereupon came Gertrude J. Niles, party defendant herein by her solicitors, Henry T. Niles and Frank C. Dougherty and gave notice of her intention to appeal this cause to the circuit court of appeals, and it appearing that said Gertrude J. Niles is the only party defendant, who has filed answer to the bill of complainant, it is ordered this stand as an order of severance, with the right to said Gertrude J. Niles to appeal alone, without joining the other defendants therein.

And thereupon came the said Gertrude J. Niles and prayed an appeal to the United States circuit court of appeals for the sixth circuit, which is granted and the bond therefor is fixed at $250.

JOHN M. HARLAN,
Circuit Justice.

June 12th, 1897.

53

Petition on Appeal.

In the Circuit Court of the United States for the Northern District of Ohio, Western Division.

THE CEDAR POINT CLUB, Complainant,
vs.
HENRY T. NILES, GERTRUDE NILES, ET AL., Defendants. } In Equity. No. 1311.

Petition on appeal.

The above-named Gertrude J. Niles conceiving herself aggrieved by the decree made and entered on the 12th day of June, 1897, in the above-entitled case, does hereby appeal from said order and decree to the United States circuit court of appeals for the sixth circuit, for the reasons specified in the assignment of errors, which is filed herewith, and she prays that this appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the United States circuit court of appeals, for the sixth circuit.

HENRY T. NILES,
FRANK C. DAUGHERTY,
Solicitors for said Gertrude J. Niles.

Endorsement on petition for appeal: In the circuit court of the United States, northern district, western division of Ohio. The Cedar Point Club *vs.* Henry T. Niles *et al.* In equity. No. 1311. Petition on appeal. Filed July 8, 1897. Irvin Belford, clerk. Henry T. Niles & Frank C. Daugherty, solicitors for G. J. Niles.

Assignment of Errors on Appeal.

In the Circuit Court of the United States in and for the Northern District of Ohio, Western Division.

THE CEDAR POINT CLUB, Complainant, *vs.* HENRY T. NILES, GERTRUDE J. NILES, ET AL., Defendants.	In Equity. No. 1311.

Assignment of error on appeal.

54 The said Gertrude J. Niles now comes and says that the decree in said cause is erroneous and against the just rights of her the said Gertrude J. Niles, for the following reasons:

That said decree is against the evidence of the case and the law applicable thereto.

That upon the evidence and the law applicable thereto the decree should have been in favor of the said Gertrude J. Niles and against the complainant.

FRANK C. DAUGHERTY &
HENRY T. NILES,
Solicitors for Gertrude J. Niles.

Endorsement on assignment of error: In the circuit court of the United States, northern district, western division of Ohio. The Cedar Point Club *vs.* Henry T. Niles *et al.* In equity. No. 1311. Assignment of error on appeal. Filed July 8, 1897. Irvin Belford, clerk. Henry T. Niles & Frank C. Daugherty, solicitors for G. J. Niles.

Order Allowing Appeal.

June Term, A. D. 1897, to wit, July 8th, 1897.

Present: Honorable E. S. Hammond, U. S. district judge. Sitting by designation.

THE CEDAR POINT CLUB *vs.* HENRY T. NILES and GERTRUDE J. NILES ET AL.	No. 1311. Chancery.

This day came Gertrude J. Niles and filed in this court her petition for appeal and her assignment of error on appeal to the circuit court of appeals of the sixth circuit.

On consideration whereof the said claim of appeal is hereby allowed on the said Gertrude J. Niles executing an undertaking according to law in the sum of two hundred and fifty dollars, with sureties to the acceptance of this court.

Undertaking on Appeal.

Know all men by these presents, that we, Gertrude J. Niles, as principal, and Henry T. Niles, as sure*ties* are held and firmly bound unto the complainant, The Cedar Point Club, in the full and just sum of two hundred and fifty ($250.00) dollars to be paid to
55 the said complainant, The Cedar Point Club, its certain attorneys, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 9th day of July, in the year of our Lord one thousand eight hundred and ninety-seven.

Whereas, lately at a circuit court of the United States for the northern district of Ohio, in a suit depending in said court, between The Cedar Point Club, complainant, and Henry T. Niles, Gertrude J. Niles, *et al.*, defendants, a decree was rendered against the said Henry T. Niles, Gertrude J. Niles, *et al.*, and the said Gertrude J. Niles, having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said The Cedar Point Club, citing and admonishing them to be and appear at a session of the United States circuit court of appeals for the sixth circuit, to be holden in the city of Cincinnati, in said circuit, on the 8th day of August next:

Now, the condition of the above obligation is such, that if the said Gertrude J. Niles, shall prosecute said appeal to effect and answer all damages and costs if she fail to make the said plea good, then the above obligation to be void, else to remain in full force and virtue.

GERTRUDE JAMES NILES.
HENRY T. NILES.

U. S. OF AMERICA,
Northern Dist. of Ohio, } *ss:*

Henry T. Niles, being sworn says he has property subject to execution over and above his debts and liabilities to the value of $500.00.

H. T. NILES.

Sworn to and subscribed before me July 9, 1897.

IRVIN BELFORD, *Clerk.*

Approved by E. S. Hammond, United States district judge, sitting by designation as circuit judge.

Endorsement on undertaking on appeal: The Cedar Point Club *vs.* Henry T. Niles *et al.* Undertaking on appeal. Filed July 9, 1897. Irvin Belford, clerk.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

56 DEPARTMENT OF THE INTERIOR, H. K.
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Jan'y* 23, 1896.

I, S. W. Lamoreux, Commissioner of the General Land Office, do hereby certify that the annexed photolithographs of the plats of survey of township 9 south, range 9 east; township 9 south, range 10 east, and township 10 south, range 10 east, Michigan meridian, surveyed by Ambrose Rice, and approved at Cincinnati, Sept. 30, 1835, are true and literal exemplifications of the official plats of the survey thereof on file in this office.

In testimony whereof, I have hereunto subscribed my name, caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

S. W. LAMOREUX,
[SEAL.] *Commissioner of the General Land Office.*

(Here follow plats marked p. 59, 60, & 61.)

Endorsed: No. 1311. U. S. circuit court, northern district of Ohio, western division. Cedar Point Club *vs.* Henry T. Niles *et al.* Photolithographs of the plats of survey, &c. Filed June 22, 1896. Irvin Belford, clerk.

DEPARTMENT OF THE INTERIOR, W. M. W.
GENERAL LAND OFFICE, O. H.
WASHINGTON, D. C., *April* 28, 1885. W. O. C.

I, Wm. A. J. Sparks, Commissioner of the General Land Office, do hereby certify that the annexed tracings of plats of the survey of certain portions of township 9 south, range 9 east, and townships 9 and 10 south, range 10 east, Michigan meridian, in the State of Ohio, made by John B. Marston, under instructions from the Commissioner of the General Land Office, dated April 2, 1881, are true and literal exemplifications of the official plats of said survey on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Wash-
57 ington, on the day and year above written.

WM. A. J. SPARKS,
[SEAL.] *Commissioner of General Land Office.*

(Here follow plats marked pp. 62 to 67, incl.)

Endorsed: No. 1311. U. S. circuit court, northern district of Ohio, western division. Cedar Point Club *vs.* Henry T. Niles *et al.* Tracings of plats of the survey, etc. Filed June 22, 1896. Irvin Belford, clerk.

In the Circuit Court of the United States for the Northern District of Ohio, Western Division.

THE CEDAR POINT CLUB
vs.
GERTRUDE J. NILES. } Equity. No. 1311.

NORTHERN DISTRICT OF OHIO, *ss:*

I, Irvin Belford, clerk of the circuit court of the United States for said district, do hereby certify that the annexed and foregoing pages contain a full and true copy of the record, exhibits and all proceedings in the above case, and there is annexed to and transmitted therewith the citation issued therein.

In testimony whereof, I have hereunto signed my name and affixed the seal of the said court at Toledo, in said district, on this 3d day of August, A. D. 1897, and of the 122d year of the Independence of the United States of America.

IRVIN BELFORD, *Clerk,*
[SEAL.] By J. W. WILSON,
Deputy Clerk.

THE UNITED STATES OF AMERICA, *Sixth Judicial Circuit,* } *ss:*

The United States Circuit Court of Appeals for the Sixth Circuit.

To the Cedar Point Club, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States circuit court of appeals for the sixth circuit, to be holden at the city of Cincinnati, in said circuit, on the 8th day of August next, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the northern
58 district of Ohio, wherein Gertrude J. Niles is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 9th day of July, in the year of our Lord one thousand eight hundred and ninety-seven, and of the Independence of the United States of America the one hundred and twenty-second.

E. S. HAMMOND,
United States District Judge, Sitting by Designation as Circuit Judge.

I hereby, this 10th day of July, 1897, accept due personal service of the foregoing citation on behalf of Gertrude J. Niles, appellant, and do hereby enter our appearance in said proceeding in appeal in the United States circuit court of appeals for the sixth circuit.

CEDAR POINT CLUB,
By POTTER & EMERY, *Its Att'ys.*

68 And afterwards, to wit, on August 9th, 1897, an appearance was filed in said court in said cause, which is in the words and figures following:

United States Circuit Court of Appeals for the Sixth Circuit, October Term, 1896.

GERTRUDE J. NILES
v.
THE CEDAR POINT CLUB. } No. 541.

To the clerk of said court:

Please enter our appearance as counsel for the appellant in the above-entitled case.

HENRY T. NILES.
FRANK C. DAUGHERTY.

And afterwards, to wit, on October 27, 1897, an order was entered upon the journal of said court in said cause; which order reads and is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

GERTRUDE J. NILES
v.
THE CEDAR POINT CLUB. } Appeal from the Circuit Court of the United States for the Northern District of Ohio. Before Judges Taft, Lurton, and Severens.

69 This cause came on to be heard this day and was argued by Mr. Henry T. Niles for the appellant, and by Mr. Thomas Emery for appellee, and is submitted to the court for decree.

And afterwards, to wit, on February 8th, 1898, and opinion was rendered in said cause, which is in the words and figures as follows:

Opinion.

70 United States Circuit Court of Appeals, Sixth Circuit.

GERTRUDE J. NILES
vs.
THE CEDAR POINT CLUB. } No. 541. Appeal from the Circuit Court of the United States for the Western Division of the Northern District of Ohio.

Submitted October 27, 1897; decided February 8, 1898.

Before Taft and Lurton, circuit judges, and Clark, district judge.

This bill was filed by the Cedar Point Club, an Ohio corporation, to restrain threatened continuous trespasses upon a large body of marshy land lying on the shore of Lake Erie and in Lucas county, Ohio. The complainant's title depends upon patents from the United States to H. M. Hanna and Phillip Lacourse issued in 1882, and mesne conveyances to complainant. Gertrude Jane Niles,

the appellant, who was defendant below, denied the title of complainant and claimed the same lands under eleven patents for fractional sections issued to Margaret Bailey in 1834, and under mesne conveyances to the said Gertrude J. Niles. Upon the pleadings and evidence there was a decree for the complainant and a perpetual injunction awarded. The correctness of that decree depends upon the true boundary of the patents to Margaret Bailey. Those patents were for fractional parts of sections and each was meandered on the southwestern margin of a marsh, having an area of some 4,900 acres, which lies between the meandered line of the Margaret Bailey patents and the open water of Lake Erie. If that meandered line following the margin of the swamp was intended as a boundary line, the decree must be affirmed, otherwise it must be reversed.

The further facts necessary to be stated appear in a stipulation upon which the case was heard below, and are these:

1. In 1834–1835, Ambrose Rice, a Government surveyor, surveyed and subdivided fractional township 9 south, in range 9 east,
71 and 9 and 10 south, in range 10 east, from the Michigan meridian, and duly certified his field-notes of such survey and subdivision to the then surveyor general, Robert T. Lytle. These townships are now in Lucas county, Ohio.

In making a survey of these three townships, sections 22, 25, 26, and 27, T. 9 S., range 9 east, and sections 30, 31, and 32, in T. 9 S., range 10 east, and sections 4, 9, 10, and 11, T. 10 S., range 10 E., were meandered on the southwestern margin of a marsh described on one plat as "a flag marsh," and on another plat as "impassable marsh or water." On the west of this marsh, Rice at the same time surveyed a narrow strip of sand separating this marsh from the open waters of Maumee bay, and on the northeast a like strip separating it from the open waters of Lake Erie. This strip commenced in section 22, T. 9, R. 9, and ended in section 11, T. 10, R. 10, and was divided by two openings into the lake, into what Rice called Cedar, Sandy, and Crain islands. This strip was meandered on the one side along the open waters of the bay and lake, and on the other side on this same "flag marsh" or "impassable marsh or water."

One of these plats, being that of subdivision of T. J. S., R. 9 E., is here set out as exhibiting, in a general way, a portion of the meandered line of the fractional sections, the boundaries of which are here involved:

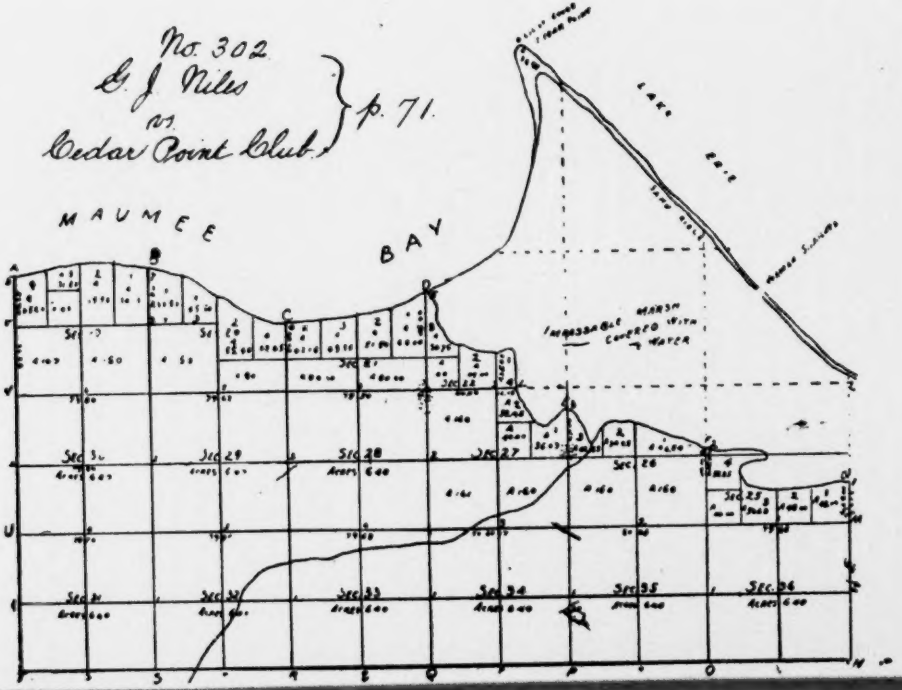
(Here follows diagram marked page 71.)

72 2. On the 10th of July, 1844, eleven patents were issued to Margaret Bailey for these eleven fractional sections above mentioned, that is, for 22, 25, 26, and 27, T. 9, R. 9, and 30, 31, 32, T. 9, R. 10, and 4, 9, 10, and 11, T. 10, R. 10, extending the entire length of this marsh, each patent specifying the number of acres contained between the section line and the meandered line as run by Rice.

3. The plats and marginal field-notes also show that the southerly

TOWNSHIP No. IX SOUTH RANGE No. IX EAST OF THE MICH. MER.

No. 302
G. J. Niles
as
Cedar Point Club
} p. 71.



edge of the "flag marsh," "impassable marsh and water," was surveyed and that the lines of the fractional sections southerly of the said marsh and water, were identical with the southerly edge of the marsh. The computed areas of the fractional sections and of their respective subdivisions, as shown upon the said plat, conformed to the area included within the said surveyed lines, and did not, nor any thereof, include any part of either marsh, water or islands. The several patents to Margaret Bailey are of the same date and each identical in form, except as to description. The description of the patent for section 11, T. 10, R. 10 E., is here set out as fairly typical of the form and description of all the rest. It is as follows:

"To all to whom these presents shall come, Greeting:

"Whereas, Margaret Bailey, of Champaign county, Ohio, has deposited in the General Land Office of the United States a certificate of the register of the land office at Bucyrus, whereby it appears that full payment has been made by the said Margaret Bailey according to the provisions of the act of Congress of the 24th of April, 1820, entitled 'An act making further provision for the sale of public land' for fractional section eleven (11), in township ten (10) south of the Michigan base line of range ten (10), in the district of land subject to sale at Bucyrus, Ohio, containing twenty (20) acres and forty-five hundredths of an acre, according to the official plat of the survey of said lands returned to the General Land Office by the surveyor general, which said tract has been purchased by the said Margaret Bailey."

4. It appears from the official correspondence of the land office in evidence, that in 1850 the State of Ohio, under the swamp act of that year, demanded patents for 32,438 acres as swamp land. Patents were issued for all these lands except 6,797 acres, the claim to which was rejected upon the ground that it was not swamp land "and nearly all sold." Of the amount rejected, the greater part consisted of the lands marked "flag marsh," "impassable marsh and water" on the plats and in the field-notes of Ambrose Rice, being the lands now here in controversy.

5. On September 16, 1861, a patent was issued to Chester W. Norton for 34 acres and $\frac{89}{100}$ acres, being the land known as "Cedar point" on the plat of Ambrose Rice, east of Maumee bay in T. 9 S., R. 9 E. of the Michigan meridian. And on the 10th of October, 1876, a patent was issued to Arthur D. Howell for that portion of the sandy ridge shown on the plat of Ambrose Rice as Sandy island and Crain island, in section 24, T. 9, R. 9 E., and in sections 19, 29, 30, 32, and 33, in T. 9 S., R. 10 E., and in sections 2, 3, 4, and 11, in T. 10 S., R. 10 E. Michigan meridian, and containing in all 55 and $\frac{55}{100}$ acres, according to the official plat and survey of the said lands as returned to the surveyor general by said Ambrose Rice.

73

6. On the 13th of July, 1874, the General Land Office issued a circular letter concerning the circumstances under which the department would cause surveys to be made of lands theretofore

unsurveyed and platted because of the presence of water. Among other things stated in that circular letter, it was said:

"The beds of lakes (not navigable) sloughed, and ponds over which the lines of the public surveys were not extended at the date of the original survey, but which from the presence of water at the date of such survey were meandered, are held to be the property of the United States; and whenever, by evaporation or the operation of any other cause, natural or artificial, the waters of such lake, slough or pond have so permanently receded or dried up as to leave within the unsurveyed area dry land fit in ordinary seasons, for agricultural purposes, such dry land is subject to survey and sale under the general laws regulating the disposal of the public domain."

In April and May, 1881, John B. Marston, a civil engineer residing in Lucas county, under the instructions from the Commissioner of the General Land Office of date April 2, 1881, surveyed and subdivided into sections the area which was as aforesaid in and upon the surveyor general's plat of Ambrose Rice's survey designated as "flag marsh" and "impassable marsh and water" in said town 9 south, range 9 east, and towns 9 and 10 south, range 10 east; and on May 28, 1881, duly certified his field-notes of said survey to the then Commissioner of the General Land office.

This survey was so made, and the area surveyed so subdivided into sections and parts of sections, as to complete and render full, to the extent that the area so then surveyed was in form suitable therefor, the sections which in said Rice's survey were rendered fractional by omission and exclusion from said survey of area designated as "flag marsh" and impassable marsh and water."

The boundary line on the westerly side of the area so surveyed by said Marston, from the point 2.75 chains easterly of the section line between sections 21 and 22, in town 9, range 9, extending somewhat east of north to the southerly extremity of the west part of Cedar island is the shore of Maumee bay; and the boundary line on the southerly and westerly sides of said survey, from the point 2.75 chains easterly of the said line between sections 21 and 22 extending southerly and easterly to the outlet of Crane creek, in section 11, town 10, range 10, is identical with the boundary
74 line between the surveyed lands and the "flag marsh" and "impassable marsh and water," as shown upon the said plat of the survey made by Ambrose Rice.

The land thus surveyed and subdivided by Marston was subsequently patented to H. M. Hanna and Phillip La Corse, from whom the appellee holds deeds conveying all the rights of the said patentees thereunder.

Concerning the character of the marshy land thus patented to Hanna and La Corse, the facts as stipulated by the parties in interest are these:

"16. At the time of the making of the survey by Ambrose Rice the waters of Lake Erie were above their ordinary stage and there was more than the usual volume of water standing upon the land in controversy herein and flowing to and upon the same from the

large bodies of land now in Ottawa, Wood and Lucas counties, respectively, having their drainage to and through the said premises in controversy herein.

"17. The general character, description and condition of the said land surveyed by said Marston was by him correctly set forth under the title 'General description' in the field-notes of the said survey so as aforesaid by him certified to the Commissioner of the General Land Office.

"That concerning the portion of said survey in town 9 south, range 9 east, reciting, to wit:

"'The surface of that part of this fractional township, comprised in this survey, is covered with a deep marsh of grass, canes or reeds, wild rice, etc. Many parts of it, particularly in the south and west part, are mown for a kind of coarse hay. Other parts are filled with bogs and pond holes that do not dry in summer. It receives the natural drainage from the woods on the south and west, which without any well-defined channel finds its way across the marsh to the lake. Again in heavy gales of wind it is subject to inundations from the lake, which upon the subsidence of the gale or change of direction in the wind, slowly finds its way out again into the lake. It is bounded along the lake by a sand beach averaging 1 chain in width, and 3 feet in height.'

"That concerning the portion of said survey in town 9 south, range 10 east, reciting, to wit:

"'The surface of this fractional township is covered with a deep marsh of grass, canes or reed, wild rice, etc. Much of the south part can be mown for marsh hay, being in a measure drained by a canal that has been constructed in the twp. south. Other parts are filled with bogs and pond holes that do not dry in summer. It receives the drainage from wood on the south and west, which spreads over the entire surface and without any positive channel finds its way to the lake.

"'Again the twp. is subject to inundations from the lake during heavy gales of wind which upon the termination of the gale, or a change in the direction of the wind, slowly finds its way back into the lake.

75 "'This fractional twp. is bounded on the northeast by Lake Erie, between the lake and the marsh proper is a sand beach, averaging 3 feet high and 1 chain in width, generally covered with bushes and small trees of oak, poplar, willow and cottonwood.'

"That concerning the portion of said survey in town 10 south, range 10 east, reciting, to wit:

"'The description for this township must necessarily be similar to that of the two preceding townships. The surface of that part of the twp. comprised in this survey is one large swampy marsh, land generally very wet and boggy. Its surface is covered with grass canes (or joint grass), wild rice, and such like marsh productions, reaching to a height of ten or more feet. Some parts, especially on sec. 10 & 11 can be pastured, but the larger portion is filled with bogs and pond holes, connected by narrow and tortuous channels.

"'It receives the drainage from the woods on the south and west

and is subject to inundations from the lake. On the prevalence of strong S. W. winds this water flows from the marsh into the lake, and upon the occurrence of N. E. winds the lake floods the marsh. The principal outlets and inlets are Crane creek and Ward's canal. This canal is an improvement made by C. B. Ward, of Detroit, Michigan, on sec. 4, and running across sec. 5 for the purpose of getting vessels and ship timber from his ship yard on sec. 5. It is built without locks and is really only a great ditch. Waterway 50 feet. Depth 7 feet. The buildings (or sheds) at the fishing stations 4 & 11 are the only other improvements.'

"A comparison of the survey made by Ambrose Rice in 1834 and 1835 with that made by John B. Marston in 1881 indicates that Sandy and Crane islands washed somewhat shoreward during the period intervening between the making of said respective surveys.

"18. By reason of unusual drouth which during the years 1893, 1894 and 1895 prevailed quite generally over the region of country from which Lake Erie and its tributaries derive their waters, including that the drainage whereof was to and through the premises in controversy, the major portion of the said premises was dry during the summer of 1895, except in case of heavy local rains or when the adjacent waters of Lake Erie were higher than they usually were during that summer."

LURTON, circuit judge, after making the foregoing statement of facts, delivered the opinion of the court:

By the provisions for the survey of public lands, now found in sections 2395 and 2396, Revised Statutes, it is required that such lands shall be surveyed into townships six miles square, and each in turn subdivided into 36 sections of a mile square, except where the line of an Indian reservation, or of tracts of land hereto-
76 fore surveyed or patented, or the course of navigable rivers, may render this impracticable; and in that case this rule must be departed from no further than such particular circumstances require. The patents to Margaret Bailey are for fractional sections. The boundary lines are not set out in the patents, but reference is made to the official plat of the survey of said lands for identification of the land granted, thereby adopting the plat as a part of the instrument.

Hardin v. *Jordan*, 140 U. S., 371–380.

When we refer to the plat and field-notes we find that all the lines of each fractional section are straight except the line bordering the swamp or marsh laid down upon one plat as "a flag marsh" and upon another as "impassable marsh and water." The straight lines of the sections are not continued into or across this marsh, but stop at the margin thereof. Beyond this marsh and adjoining the open waters of Lake Erie, there was a long, low and narrow sandy ridge, broken at points by shallow water channels. These small areas of dry land were separately conveyed and platted as additional fractional sections. Along the southwestern border or margin of this marsh the plat shows that a line was meandered, and the question

is, whether this line meandered along the water line of this marsh is the boundary line of the fractional sections bordered on said marsh.

In view of the form of title granted to Margaret Bailey, we are called upon to inquire and determine the effect of that title in reference to this flag marsh upon which her fractional sections meander. The long and undisputable practice of the Government has been to measure the price of public lands, when patented, by the quantity of upland granted and to require no payment for lands covered by the waters of streams or lakes. For the purpose of ascertaining the quantity of upland to be paid for, a line meandering the margin of such waters is run, and, where this is the purpose of running such a meandering line, it is not regarded as in any sense a boundary, but as only pointing out the sinuosities of the bank for the purpose of arriving at the area of land to be paid for.

Railroad Company v. Schumeir, 7 Wall., 272.
Hardin v. Jordan, 140 U. S., 371–380.
Horne v. Smith, 159 U. S., 40–43.

As we understand it, the contention of the appellant is, that this meander line following the southerly water line of the marsh was not run as a boundary line, and that if the marsh, under the evidence, was a part of Lake Erie, her boundary is the shore line of the lake proper, and if that shore line has receded, her boundary has followed the retreating shore, giving to her under the doctrine of reliction the land thus gained. On the other hand her contention is, that if the marsh was not a part of the lake, but was a mere pond,
marsh or other shallow non-navigable body of water, that
77 her boundary should be projected by extension of the side lines of each fractional section into said shallow pond or marsh, so as to complete each section as required by the law requiring the subdivision of each township into thirty-six sections of 640 acres each.

It has been long settled that Government grants for lands bordering upon navigable waters extend only to high-water mark. The title to the shore and to the lands under such water, is in the State within which such waters are situated as an incident of the sovereignty of the State, and are held by the State in trust for the public purposes of navigation. The United States has never had title to submerged lands under navigable waters, and its grants could not, therefore, be held as conveying them to their patentees.

John Pollard et al., Lessee, v. John Hagan et al., 3 How., 212.
McCready v. Virginia, 4 Otto, 394.
Weber v. Harbor Commissioners, 18 Wall., 57.
Hardin v. Jordan, 140 U. S., 371–380.
Scranton v. Wheeler, 16 U. S. A., 152.

It would therefore, follow that if this "flag marsh" shown on the plats of Ambrose Rice, was then a part of Lake Erie proper, the submerged lands would not be subject to grant by the United States, and that the title of the Cedar Point Club would fail, and this, with-

out regard to the goodness or badness of the title claimed under the doctrine of reliction by the appellant. But that marsh, under the stipulation as to the facts, cannot be regarded as a part of Lake Erie. The waters of that lake did not permanently submerge the lands described as "flag marsh" or "impassable marsh and water." In times of heavy gales the marsh was subject to temporary inundation, but otherwise the water, which stood or flowed over or through it, seems to have been the mere drainage from the higher lands adjoining, which found its way over these low lands to the lake. At the time of Rice's survey there was an unusual amount of water standing or flowing over the disputed land, and this may account for his failure to survey and plat it. When Marston made his survey in 1881, much of the marsh was dry enough for pasture purposes and much was capable of yielding harvests of coarse hay, and all or nearly all was covered with grass, wild rice, and other products of such swampy land. At a still later period it is shown that an even more favorable condition for pastoral purposes existed, due to unusual droughts occurring in 1893, 1894 and 1895. While under the stipulation as to the facts we must regard the condition of the marsh at the time of Rice's survey as exceptional, we have no such liberty in regard to its condition when Marston made his survey. We can, therefore, find no evidence of any such general and continuous lowering of the level of the water in the
78 lake, as would, by the doctrine of reliction, give to a riparian proprietor the land gained between an old and new shore line.

The decision of the supreme court of Ohio in *James v. Howells*, 41 Ohio St., 696, can have no effect as *res judicata*, because it was not a suit between the parties to this record. That was a controversy between James, a predecessor in title, to the appellant, and Howells, the patentee of one of the so-called sandy islands, shown on Rice's plat. James claimed then, as does his successor in title now, that the boundary of the Margaret Bailey patents was the open water of the lake, which would thus include Howells' island. Howells' defense seems to have been, first, that this marsh was a part of the lake proper, and that his patent was for an island separated from the shore of this lake by this marsh; second, that the meander line run by Rice on the border of this marsh *was run as a boundary line*, and, therefore, the grants to her could not, under any circumstances, convey land not within her boundaries. The case was decided for Howells upon both grounds. So far as it was a judgment upon facts, it is of no force or effect upon a different record and between different parties. The conclusion of that court upon the evidence relating to the character of this marsh was thus stated by the court:

"The contributions of such streams, mingled with other water of the lake, fill the straits between Cedar, Sandy and Crane islands, and the space platted as 'impassable water and marsh.' Even at low water in the lake, there is six inches of water in this marsh. Witnesses speak of a chain of ponds. These are merely spots in the marsh where, because of the depth, or for some other reason, vegetation has not been able to find support. The water is under the

vegetation that covers the so-called marsh, as well as the so-called ponds. The islands are in fact surrounded by water, although vegetation of a certain sort grows thickly in much of that water. The meandered line along the southerly edge of the so called marsh, was in fact along a shore of the lake. In order to form a statutory boundary, the navigable river need not be actually navigable at every point. Lake Erie as a whole is navigable. For that reason every part of its shore, under the act, might be treated by the surveyor as a legal boundary for fractional townships and sections. In so treating so much of the lake as lay behind these islands, Rice and Lytle did not exceed their authority. According to the evidence put in by James, as well as by Howell, it appears that even at a low stage of the lake there is six inches depth of water in this marsh, and a greater depth in the straits."

But the question as to whether this marsh was a part of Lake Erie and therefore a proper boundary for public lands, bordering thereon, is a question of fact, to be determined in this case upon the evidence in the record. There is no evidence in this record that the land in controversy "is land continuously submerged under not less than six inches of water in seasons when the water was
79 lowest," such as was found in the Ohio case. No such state of facts is shown in this record, and by no stretch of imagination could any court upon this record conclude that this low, swampy body of land, partly boggy, partly dry and sometimes subject to temporary inundation, was so continuously under the water of the great lake as to be a part thereof. We, therefore, reach the conclusion that this marsh was no part of Lake Erie when Rice made his survey in 1833–1834, and that if same was not included within the patents to Margaret Bailey for the fractional sections bordering thereon, it continued to be a part of the public lands subject to survey and patent. That a water line existed along the course of the meandered line run by Rice cannot perhaps be collaterally questioned. But the question is, whether that water line was the line of this marsh then having an unusual amount of water collected therein, or the water line of the lake proper? That the meandered line followed the sinuosities of the marsh and not of the lake is most evident from the facts of this case. The area of the fractional sections is given, and it is stipulated that no part of the area of the marsh or sandy islands was included in the survey under which Margaret Bailey's patents issued. It is also evident that no part of the marsh was surveyed at all. It is thus most manifest that this meandered line was run as a boundary and not merely for the purpose of ascertaining the quantity of dry land paid for.

It would be useless to speculate as to the reason which induced Rice to make the border of this marsh a boundary of the fractional sections bordering thereon. That he did so, there can be no doubt. Margaret Bailey paid only for the area of the lands actually included in the fractional sections, and accepted patents in which the meandered line along this marsh was made a boundary. She and her successors in the title are estopped to deny that the line of that

marsh was a proper line for a boundary. The patents conveyed only the land which was surveyed.

The case is governed by that of *Horne v. Smith*, decided in 1894, and reported in 159 U. S., page 40, *et seq.* That case involved the true boundary of three patents for fractional sections of public lands in Florida. The patents adopted the official plat of survey for identification of the lots granted. That plat showed that these lots were fractional sections bordering on Indian river. All the lines of the patents were the usual straight lines with the exception of a line meandering a water line marked on the plat as "Indian river." The facts as to this line as stated in the opinion of the court, were these:

"Along the course of this meander line, as shown on the plat, runs, according to the testimony, a bayou or savannah opening into the Indian river, and west of this bayou, and between it and the main waters of the river, is a body of land extending a distance of a mile or a mile and a quarter, and amounting to some 600 80 acres. This is a body of law land, in some places however from four to six feet above the level of the river, and covered with a growth of live-oak trees, many of them three and four feet in diameter. It was not land formed by accretions since the survey."

The contention was that this meandered line was not run as a boundary, but merely to ascertain the quantity of upland to be paid for and that the patents granted the lands between that line and Indian river, which was in fact more than a mile away. The land lying between this meandered line and Indian river was not in fact surveyed. In the course of its opinion the court said:

"But the question in this case is whether the boundary of these lots is the bayou or the main body of the river. That a water line runs along the course of the meander line cannot, of course, in the face of the plat and survey, be questioned, but that the meander line of the plat is the water line of the bayou rather than that of the main body of the river, is evident from these facts. In the first place, the area of the lots is given, and when that area is stated to be 170 acres, it is obvious that no survey was intended of over 700 acres. In the second place, the meander line, as shown on the plat, is so far as these lots are concerned, wholly within the east half of sections 23 and 26, while the water line of the main body of the river is a mile or a mile and a quarter west thereof, in sections 22 and 27. Again, the distance from the east line of the section to the meander line is given, which is less than a quarter of a mile, while the distance from such east line to the main body of the river must be in the neighborhood of a mile and a half. Further, the description in the patent is of certain lots in sections 23 and 26, and, manifestly, that was not intended to include land in sections 22 and 27.

"These considerations are conclusive that the water line which was surveyed and made the boundary line of the lots, was the water line of the bayou or savannah, and there has been simply an omission to make any survey of the tract west of the bayou, and

between it and the main body of the Indian river. It is unnecessary to speculate why it was that it was not surveyed. It may have been a mere oversight, or it may have been because the surveyors thought that the action of the water would soon wash the low land away; but whatever the reason, the fact is obvious that no survey was made of that body of land, and the boundary line fixed was the water line of the bayou. * * *

"Although it was surveyed it does not follow that a patent for the surveyed tract adjoining carries with it the land which, perhaps, ought to have been, but which was not in fact, surveyed. The patent conveys only the land which is surveyed, and when it is clear from the plat and the surveys that the tract surveyed terminated at a particular body of water, the patent carries no land beyond it."

In conclusion, the court said:

"So, in the case before us, obviously the surveyors sur-
81 veyed only to this bayou, and called that the river. The plaintiff has no right to challenge the correctness of their action, or claim that the bayou was not Indian river or a proper water line upon which to bound the lots."

The conclusion we reach is, that the meandered line was the boundary line of the Margaret Bailey patents, and that the marsh was public lands subject to survey and patent, and that appellees obtained the title under the patents to Hanna and La Corse.

This conclusion affirms the opinion of Justice Harlan, who heard this case below, and who, in a memorandum opinion, said:

"My opinion is that the plaintiff is entitled to the relief asked in the bill. My conclusion rests upon the general ground that while a meander line is ordinarily to be taken as showing only the quantity of land to be paid for by the purchaser, the meander line in this case must be taken as a line of boundary. I do not think that there was any intention, by the survey and patents under which the principal defendant claims, to pass the title to the marsh land between the 'meander' line and the islands. On the contrary, it must be taken that the intention was not to pass the title to that land. I concur entirely with what was said in *James v. Howell*, 41 Ohio St., 696. And that case is supported in principle by *Horne v. Smith*, 159 U. S., 40."

The decree is in all things affirmed.

82 And afterwards, on the same day, to wit, on February 8, 1898, a decree was rendered in said cause; which decree is in the words and figures following:

United States Circuit Court of Appeals for the Sixth Circuit.

GERTRUDE J. NILES *v.* THE CEDAR POINT CLUB.	Appeal from the Circuit Court of the United States for the Northern District of Ohio.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the northern district of Ohio, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed with costs.

And afterwards, to wit, on May 2nd, 1898, a petition for appeal was filed in said court in said cause; which is in the words and figures following:

United States Circuit Court of Appeals for the Sixth Circuit.

GERTRUDE J. NILES, Appellant,
v.
THE CEDAR POINT CLUB, Appellee. } No. 541. Petition on Appeal.

The above-named Gertrude J. Niles, conceiving herself aggrieved by the decree made and entered on the 8th day of
83 February, 1898, in the above-entitled case, does hereby appeal from the said order and decree of the United States circuit court of appeals, sixth circuit, to the Supreme Court of the United States, for the reasons specified in the assignments of error which are filed herewith; and she prays that this appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

HENRY T. NILES,
FRANK C. DAUGHERTY,
Solicitors for said Gertrude J. Niles.

And afterwards, on the same day, to wit, on May 2nd, 1898, assignments of error were filed in said court in said cause, which read and are as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

GERTRUDE J. NILES, Appellant,
v.
THE CEDAR POINT CLUB, Appellee. } No. 541. Assignments of Error on Appeal.

The said Gertrude J. Niles now comes and says—

That the decree in said cause is erroneous and against the just rights of her, the said Gertrude J. Niles, for the following reasons:

That said decree is against the evidence of the case and the law applicable thereto.

That upon the evidence and the law applicable thereto the
84 decree should have been in favor of the said Gertrude J. Niles and against the said The Cedar Point Club.

HENRY T. NILES,
FRANK C. DAUGHERTY,
Solicitors for said Gertrude J. Niles.

And afterwards, on the same day, to wit, on May 2nd, 1898, a bond on appeal was filed in said court in said cause; which bond is in the words and figures as follows:

Know all men by these presents that we, Henry T. Niles, as principal, and Frank C. Daugherty, as surety, are held and firmly bound unto the Cedar Point Club in the full and just sum of two hundred and fifty dollars, to be paid to the said The Cedar Point Club, its certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, o-r heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 2nd day of May, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas lately, at a session of the United States circuit court of appeals for the sixth circuit, in a suit depending in said court between Gertrude J. Niles, appellant, and The Cedar Point Club, appellee, a decree was rendered against the said Gertrude J. Niles, and the said Gertrude J. Niles having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said The Cedar Point Club, citing and admonishing it to be and appear at a session of the Supreme Court of the United States, to be holden at the city of Washington, D. C., on the — day of —— next:

85 Now, the condition of the above obligation is such that if the said Gertrude J. Niles shall prosecute her appeal to effect and answer all damages and costs if she fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in the presence of—

HENRY T. NILES.
FRANK C. DAUGHERTY.

Approved by—
WM. H. TAFT,
Circuit Judge and ex Officio Presiding Judge in Circuit Court of Appeals in the Above Cause.

And afterwards, on the same day, to wit, on May 2nd, 1898, an order allowing appeal was entered upon the journal of said court in said cause, which reads and is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

GERTRUDE J. NILES, Appellant, *v.* THE CEDAR POINT CLUB, Appellee. } No. 541. Order Allowing Appeal.

This day came said Gertrude J. Niles and filed in this court her petition for appeal and her assignments of error on appeal to the Supreme Court of the United States.

On consideration whereof the said claim of appeal is hereby allowed on the said Gertrude J. Niles executing and undertaking, according to law, in the sum of two hundred and fifty dollars, with sureties to the acceptance of this court.

WM. H. TAFT,
Circuit Judge and ex Officio Presiding Judge of U. S. Court of Appeals, Sixth Circuit, in Above Cause.

86 United States Circuit Court of Appeals, Sixth Circuit.

GERTRUDE J. NILES, Appellant,
vs.
THE CEDAR POINT CLUB, Appellee.
} No. 541. Citation.

To the Cedar Point Club, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States, to be holden in the city of Washington, on the 2nd day of June, 1898, next, pursuant to an appeal filed in the clerk's office of the circuit court of appeals of the United States, sixth circuit, wherein Gertrude J. Niles is appellant and you are appellee, to show cause, if any there be, why the decree rendered against said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 2nd day of May, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States of America the one hundred and twenty-third.

WM. H. TAFT,
Circuit Judge & ex Officio Presiding Judge of U. S. Court of Appeals, 6th Circuit, in Above Cause.

87 I hereby, this 3rd day of May, 1898, accept due personal service of the foregoing citation on behalf of Gertrude J. Niles, appellant, and do hereby enter our appearance in said proceeding in appeal in the Supreme Court of the United States.

CEDAR POINT CLUB,
By POTTER & EMERY.

88 United States Circuit Court of Appeals for the Sixth Circuit.

I, Frank O. Loveland, clerk of the United States circuit court of appeals for the sixth circuit, do hereby certify that the foregoing is a true and correct copy of the record and the original citation in the case of Gertrude J. Niles *vs.* Cedar Point Club, No. 541, October term, 1897, as the same remains upon the files and records of said United States circuit court of appeals for the sixth circuit and of the whole thereof.

Seal United States Circuit Court of Appeals, Sixth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the sixth circuit, at the city of Cincinnati, Ohio, this tenth day of May, 1898.

FRANK O. LOVELAND,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

Endorsed on cover: Case No. 16,883. U. S. C. C. of appeals, sixth circuit. Term No., 302. Gertrude J. Niles, appellant, *vs.* Cedar Point Club. Filed May 21st, 1898.